

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 364

see 309

AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION No. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, ET AL., PETITIONERS,

vs.

GEORGE E. CLINE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF WASHINGTON

PETITION FOR CERTIORARI FILED OCTOBER 4, 1949.

CERTIORARI GRANTED DECEMBER 19, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No.

AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION No. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, AND J. J. ROHAN, ITS SEC-
RETARY, PETITIONERS,

vs.

GEORGE E. CLINE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON

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**IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR KING COUNTY**

No. 395781

GEORGE E. CLINE, Plaintiff.

vs.

**AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No.
882; RALPH REINERTSEN, its Business Agent, and J. J.
ROHAN, its Secretary, Defendants**

COMPLAINT—Filed May 13, 1948

COMES NOW the Plaintiff and for cause of action against
the Defendants alleges as follows:

I.

That Plaintiff is the owner and operator of a used car
lot at 3126 Eastlake Avenue, Seattle, Washington. That
the Defendant AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION No. 882 is an organized trade union with its
principal place of business in Seattle, Washington, and
RALPH REINERTSEN is its Business Agent, and J. J. ROHAN,
its Secretary.

II.

That Plaintiff does not employ any salesmen in con-
nection with the operation of his used car lot, and does
all the work in connection with said lot himself. That
there is not now, nor has there been any labor dispute in
connection with the operation of said used car lot, or any
dispute regarding the wages, hours, or conditions of em-
ployment of any employee, and that in fact Plaintiff has
no employees in connection with the operation of said lot,
and particularly no member of the Defendant union is
employed by Plaintiff.

III.

That commencing on or about the 30th day of August,
1947, Defendants have caused Plaintiff's business at the

[fol. 2] location above stated to be picketed. That the purpose of said picketing is to ~~coerce~~ Plaintiff into refraining from operating said business on Saturday during each week, to coerce the Plaintiff into either joining the Defendant union or operating his business as a union shop employing union employees in connection with the sale of used automobiles on Plaintiff's premises, and to ruin Plaintiff's business unless Plaintiff refrains from operating his said business on Saturdays, employs union employees to ~~engage in the sale of automobiles~~, or in the alternative joins the Defendant union; and the Defendants deliberately, maliciously, and by implied threats and intimidations have prevented and are now preventing Plaintiff's customers from entering Plaintiff's place of business, and are thus damaging and will destroy Plaintiff's business unless restrained.

IV.

That as a result of said picketing, Plaintiff is now suffering irreparable damage and injury to his business, in loss of profits, which damages are difficult to prove and Plaintiff has no plain, speedy or adequate remedy at law.

V.

That an emergency exists, and unless restrained, the Defendant union and its members and officers will continue to damage and unreasonably interfere with said business of Plaintiff by said picketing, and a Restraining Order should be issued immediately, preventing the Defendants from further picketing and interfering with or molesting the business or property of Plaintiff, or in any way injuring Plaintiff's said business.

VI.

That Plaintiff is entitled to an immediate, temporary and preliminary Injunction pending the hearing herein and the final disposition of the cause; and to a temporary or preliminary Injunction restraining the Defendant union, and its members and officers, and each of them, either [fol. 3] directly or indirectly, from in any manner molesting or interfering with the business of the Plaintiff, and that said temporary Injunction be granted and remain permanent upon the trial of this cause.

VII.

That the Plaintiff has been damaged in a large sum, the exact amount of which is at the present time undeterminable; that this damage will continue to increase unless Defendants are restrained.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For the immediate issuance, without notice, of a Temporary Restraining Order herein, preventing the Defendants, either directly or indirectly, from in any way interfering with, molesting, or damaging the business of the Plaintiff by picketing or otherwise, pending Plaintiff's application for a Temporary Restraining Order.

2. For a Temporary Restraining Order herein preventing the Defendants, either directly or indirectly, from in any way interfering with, molesting, or damaging the business of Plaintiff by picketing or otherwise, pending the trial of the above entitled cause.

3. That a permanent Injunction be granted herein restraining the Defendants from in any way interfering with, molesting, or damaging the business of the Plaintiff by picketing or otherwise.

4. That Plaintiff recover from Defendants his damages in such amount as may be determined to be proper.

5. That the Plaintiff recover his costs and disbursements herein.

6. That Plaintiff have and recover such other and further relief as may be proper in the premises.

McCUNE & YOTHERS

Attorneys for Plaintiff

[fols. 4-8] *Duly sworn to by George E. Cline. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed May
25, 1948

THE ABOVE ENTITLED CAUSE having come regularly on for hearing on the 19th day of May, 1948 before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court, in response to an Order to Show Cause which was entered herein on the 13th day of May, 1948, and upon the oral motion of Defendants to dismiss said Order to Show Cause; the Plaintiff appearing in person and by McCUNE & YOTHERS, his attorneys; the Defendants appearing by BASSETT & GEISNESS, their attorneys; and the Court having heard and considered the files and records herein, and the testimony introduced by the parties, and having heard and considered the arguments of counsel, and on the 25th day of May, 1948 having entered its written memorandum opinion, and being now fully advised in the premises, makes the following:

Findings of Fact

I.

That during all of the times herein mentioned the Plaintiff was and still is engaged in the business of selling used automobiles, Plaintiff's place of business being located at 3126 Eastlake Avenue, Seattle, Washington.

II.

That AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882 is a voluntary association organized as a labor union, chartered by the International Brotherhood [fol. 10] of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, and embraces among its membership persons employed and engaged in the business of selling used automobiles in the Seattle area. That the Defendants Ralph

Reinertsen, and J. J. Rohan are respectively its Business Agent and Secretary.

III.

That during the spring of 1946 Plaintiff was approached by a representative of the Defendant union, and advised that unless Plaintiff joined said union Plaintiff's place of business would be picketed by said union; that Plaintiff was thereby induced to join said union and remained a member thereof until some time in October, 1947, at which time Plaintiff was dropped from membership by reason of non-payment of dues.

IV.

That in the spring of 1946 Plaintiff became a member of the Independent Automobile Dealers Association of Seattle, paying his initiation fee therein and one year's dues; that thereafter Plaintiff attended *some but* no meetings of said Association *after June 12, 1946*; that Plaintiff paid no further dues to said Association and was not a member thereof on the 14th day of April, 1948, on which date a contract was entered into between the Independent Automobile Dealers Association, Inc. and the Defendant union.

V.

That on or about the 12th day of June, 1946, the Defendant union entered into a collective bargaining agreement with the Independent Automobile Dealers Association of Seattle, the first clause of which reads as follows:

"1. That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, [fol. 11] Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday or Sunday work will be permissible on such Saturdays and Sundays as are mu-

tually agreed upon between the Association and the Union."

That said agreement remained in effect until the 14th day of April, 1948, at which time a new contract was entered into between said union and said Association.

VI.

That on the 30th day of August, 1947, Plaintiff advised the Defendant union, through its Secretary, J. J. Rohan, that Plaintiff intended to open his place of business on Saturdays. That Defendants objected to Plaintiff so doing on the ground that Plaintiff was a member of the Independent Automobile Dealers Association and therefore bound by said contractual provision heretofore set forth, and that Plaintiff was furthermore a member of the Defendant union. That Plaintiff advised the said J. J. Rohan that he was no longer a member of the Independent Automobile Dealers Association of Seattle, and did not consider himself bound by said contract. That Plaintiff further advised the said J. J. Rohan that he no longer intended to remain a member of the Defendant union. That thereafter Plaintiff opened his place of business on Saturdays and has continued to do so at all times since. That Plaintiff's place of business was thereupon picketed by the Defendant union, and that said picketing has continued until the date of hearing herein.

VII.

That Plaintiff has at no time had in his employ any member of the Defendant union; that although at the time said picketing commenced Plaintiff did have two employees, said employees were not members of the Defendant union, [fol. 12] their duties did not include the sale of automobiles and there was no dispute between Plaintiff and said employees. That upon the establishment of said picket line, said employees ceased to work for Plaintiff and that Plaintiff has had no employees in connection with said business from the date on which said picketing commenced to the date of hearing herein.

VIII.

That the defendant union in accordance with its new contract with the Dealers Association is demanding that as a condition to the removal of said pickets, Plaintiff refrain from opening his place of business after 1:00 o'clock on Saturdays, and that Plaintiff further employ a member of the Defendant union, said employee to be compensated by being paid Seven (7%) per cent of all sales made at Plaintiff's place of business, irrespective of whether or not any sale might be made by Plaintiff.

IX.

That said picketing was normally carried on by two pickets. That said pickets carried the familiar "sandwich sign" stating that Plaintiff's place of business was unfair to defendant "Union". That said pickets talked to persons entering Plaintiff's place of business and took down the motor vehicle license numbers on automobiles of Plaintiff's patrons. That when inquiry was made by any given patron as to the reason for taking down the license number of his motor vehicle, the pickets would reply, "You'll find out". That said pickets interfered with the use of one of Plaintiff's driveways, which driveway Plaintiff closed in order to avoid any possibility of one of said pickets being run over. That as a result of said picketing Plaintiff's business fell off, and drivers for supply houses refused to deliver parts and other materials to the Plaintiff, and Plaintiff was required in order to get materials, to go to the dealers in his own vehicle and secure such materials as were needed in the carrying on of his business. That said picketing was entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave Plaintiff's place of business.

[fol. 13] From the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That the Court has jurisdiction of the parties to and subject matter of this action.

II.

That no labor dispute exists within the meaning of the laws of the State of Washington, and said picketing is, therefore, unlawful, and the Plaintiff is entitled to an injunction, pendente lite, restraining and enjoining the same, and, accordingly, the Defendants' motion to dismiss the Plaintiff's application for such injunction should be denied.

III.

That said picketing was coercive, and, therefore, an injunction forbidding the same would not infringe the Defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

DONE IN OPEN COURT this 25 day of May, 1948.

CHESTER A. BATCHELOR

Judge

Presented by:

C. M. McCUNE

Of Counsel for Plaintiff

Copy received this 25 day of May, 1948.

BASSETT & GEISNESS

Of Attorneys for Defendants

[File endorsement omitted.]

[fol. 14] IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR KING COUNTY

[Title omitted]

TEMPORARY INJUNCTION—Filed May 25, 1948

THE ABOVE ENTITLED CAUSE having come regularly on for hearing on the 19th day of May, 1948, before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court, in response to an Order to Show Cause, which was entered herein on the 13th day of May, 1948,

and upon the Defendants' motion to dismiss Plaintiff's application for a Temporary Restraining Order; the Plaintiff appearing in person and by McCune & Yothers, his attorneys of record, the Defendants appearing by their attorneys, Bassett & Geisness; and the Court having heard and considered the files and records herein, and the testimony introduced by the parties, having heard and considered the arguments of counsel, and on the 21st day of May, 1948, having entered its written memorandum opinion, and having made Findings of Fact and Conclusions of Law, and being fully advised in the premises, it is therefore,

ORDERED, ADJUDGED AND DECREED that the Defendants' motion to dismiss Plaintiff's application for a temporary Restraining Order shall be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants and each of them be and they are hereby restrained pendente lite from in any manner picketing the Plaintiff's place of business.

IT IS FURTHER ORDERED that before said Temporary In-[fol. 15-16] junction shall become effective, the Plaintiff shall execute a proper bond to the Defendants in the sum of FIFTEEN HUNDRED (\$1500.00) DOLLARS.

DONE IN OPEN COURT this 25 day of May, 1948.

CHESTER A. BATCHELOR

Judge

Presented by:

C. M. McCune

Of Counsel for Plaintiff

Copy received this 25 day of May, 1948.

BASSETT & GEISNESS

Of Attorneys for Defendants

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[File endorsement omitted.]

[fol. 17].

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

[Title omitted]

ANSWER—Filed June 29, 1948

Answering the plaintiff's complaint herein the defendants admit, deny and allege as follows:

I.

Answering paragraph II they admit that the plaintiff does not employ any salesmen in connection with the operation of his used car lot and employs no member of the defendant Union, but deny each and every other allegation therein contained.

II.

Answering paragraph III the defendants admit that on or about August 30, 1947, the defendant Union commenced picketing the plaintiff's place of business, but deny each and every other allegation therein contained.

III.

They deny each and every allegation of paragraphs IV, V, VI and VII.

Further answering and as an AFFIRMATIVE DEFENSE the defendants allege:

I.

That defendant Automobile Drivers and Demonstrators Local Union No. 882 is a voluntary association organized as a labor Union, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, embracing in its membership automobile salesmen in the Seattle area. That in March, 1945, the plaintiff became a member of the defendant Union and continued his membership therein until October, 1947, at which time he was dropped from membership for non-payment of dues.

II.

That in the spring of 1946 the plaintiff became a member of the Independent Automobile Dealers Association

of Seattle, an organization composed of used car dealers doing business in the Seattle area, which organization was the collective bargaining agency of the members thereof and negotiated with labor unions, particularly with the defendant Union, labor contracts concerning the wages of automobile salesmen, working conditions and hours of employment, and that during all of the times mentioned in the plaintiff's complaint he was a member of said Independent Automobile Dealers Association.

III.

That on or about the 12th day of June, 1946, said Independent Automobile Dealers Association entered into a collective bargaining agreement in writing on behalf of its members, including the plaintiff, with the defendant Union; said contract provided, among other things:

"1. That ~~all~~ show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday or Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

That on the 30th day of August, 1947, while said contract was in full force and effect, the plaintiff breached the same [fol. 19] in that he removed from his used car lot the sign which he had previously posted there reading "Closed Saturdays, Sundays and Holidays" and posted in lieu thereof a sign reading "Open Saturdays", and has ever since kept his place of business open for the sale of used cars on Saturdays and that by reason thereof there has ever since been a labor dispute between the plaintiff and defendant Union.

IV.

That thereafter on or about the 31st day of August, 1947, the defendant Union began picketing the plaintiff's place of business, which picketing was normally carried on by one or two pickets who wore the familiar sandwich sign stating that the plaintiff's place of business was unfair to the defendant Union; that said picketing was at all times entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave the plaintiff's place of business; and that said picketing continued until enjoined by the court on or about the 25th day of May, 1948.

V.

That in conducting the aforesaid picketing the defendants were merely exercising their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, having fully answered, the defendants pray that the plaintiff's complaint be dismissed and that they have judgment for their costs and disbursements of this action.

BASSETT & GEISNESS
Attorneys for Defendants

[fol. 19a] *Duly sworn to by Samuel B. Bassett. Jurat omitted in printing.*

Copy received

McCUNE & YOTHERS

June 25, 1948

[File endorsement omitted.]

[fol. 20] IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

[Title omitted]

REPLY--Filed June 29, 1948

Comes now the Plaintiff and replying to the affirmative defense set forth in the Answer of Defendants, admits, denies and alleges as follows:

I

Replying to paragraph I. of Defendants' affirmative defense, Plaintiff alleges that he ceased to be a member of the Defendants' Union in August, 1947, at which time Defendant Labor Union was notified by Plaintiff that Plaintiff no longer considered himself a member of the Union. Further replying to said paragraph Plaintiff alleges that he was induced to join the Defendant Union in March, 1945, by reason of threats made by the Defendants, that Plaintiff's place of business would be picketed unless he joined said Union and that Plaintiff would be put out of business.

II

Replying to paragraph II. of Defendants' affirmative defense, Plaintiff admits that in the spring of 1946 Plaintiff became a member of the Independent Automobile Dealers Association of Seattle. Plaintiff denies that he was a member of said association at the time Plaintiff's place of business was first picketed by the Defendant Union. Further replying to said paragraph Plaintiff alleges that the Defendants were informed and advised by Plaintiff [fol. 21] prior to the commencement of the picketing of Plaintiff's place of business, that Plaintiff was not a member of the Independent Automobile Dealers Association.

III

Replying to paragraph III. of Defendants' affirmative defense, Plaintiff admits that on or about the 12th day of June, 1946 the Independent Automobile Dealers Associa-

tion entered into a collective bargaining agreement with the Defendant Union, which agreement contains a clause similar to that set forth in said paragraph. Plaintiff admits that on the 30th day of August, 1947, Plaintiff posted a sign on Plaintiff's premises reading, "Open Saturdays", and that ever since has kept his place of business open for the sale of used cars on Saturdays. Plaintiff denies that said contract was on said date in full force and effect with respect to Plaintiff, and further denies that there has been or now is a labor dispute between the Plaintiff and the Defendant Union. Further replying to said paragraph, Plaintiff affirmatively alleges that on or about the 14th day of April, 1948, the collective bargaining agreement between the Independent Automobile Dealers Association and the Defendant Union entered into on the 12th day of June, 1946, was terminated and that a new agreement was then entered into. That on said date Plaintiff was not a member of the Independent Automobile Dealers Association and is not a party to said contract. That said contract was entered into prior to the commencement of the above entitled action.

IV

Replying to paragraph IV. of Defendants' affirmative defense, Plaintiff admits that the Defendant Union began picketing the Plaintiff's place of business on or about the 31st day of August, 1947 and continued said picketing until enjoined by the Court. Plaintiff admits that the pickets [fol. 22] wore the familiar sandwich sign stating that Plaintiff's place of business was unfair to the Defendant Union. Plaintiff denies that said picketing was at all times entirely peaceful and that only one or two pickets were normally employed by the Defendant Union and that pickets neither used force nor threatened physical violence, nor molested anyone either seeking to enter or leave the Plaintiff's place of business. Plaintiff affirmatively alleges that said pickets by obstructing the drive-ways to Plaintiff's place of business, taking down license number of automobiles stopping at Plaintiff's place of business and employing coercive language toward the drivers of said automobiles, effectively prevented Plaintiff's customers and suppliers from dealing with Plaintiff and from entering upon Plaintiff's place of business.

V

Replying to paragraph V. of Defendants' affirmative defense, Plaintiff denies the same.

WHEREFORE, having fully replied to the Defendants' affirmative defenses, Plaintiff prays that he have judgment as prayed for in his Complaint on file herein, together with his costs and disbursements herein incurred.

McCUNE & YOTHERS
Attorneys for Plaintiff

Duly sworn to by George E. Cline. Jurat omitted in printing.

Copy received 6/29/48

SAMUEL B. BASSETT
Attorney for Defendants.

[File endorsement omitted.]

[fol. 23]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

DECREE—Filed June 29, 1948

[Title omitted]

The above entitled cause having come on regularly for trial on the merits on the 25th day of June, 1948, before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court; the plaintiff appearing by C. M. McCune, his attorney, and the defendants appearing by Samuel B. Bassett, their attorney; and the parties, through their counsel, having stipulated in open court that the cause be submitted to the court for final judgment on the merits on the evidence heretofore taken on plaintiff's application for a temporary injunction and the arguments submitted, and the plaintiff having further stipulated to waive his claim for damages arising out of the picketing complained of; and the court having reconsidered the evidence introduced by the parties on plaintiff's application for a tem-

porary injunction, and having reconsidered and reaffirmed the memorandum opinion filed herein on the 25th day of May, 1948, following the hearing on the application for temporary injunction, and the findings of fact and conclusions of law made and entered on said date, pursuant to [fols. 24-26] said memorandum opinion, and being now fully advised in the premises, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the defendants, and each of them, be and they are hereby permanently restrained and enjoined from in any manner picketing the plaintiff's place of business.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the surety on the bond for injunction posted by the plaintiff upon the entry of the temporary injunction herein be exonerated from all liability, and the plaintiff is awarded judgment for the costs and disbursements of this action.

DONE IN OPEN COURT this 29th day of June, 1948.

CHESTER A. BATCHELOR

Judge

Approved as to form:

SAMUEL B. BASSETT

Attorney for Defendants

Presented by:

C. M. McCUNE

Attorney for Plaintiff

[File endorsement omitted.]

[fol. 27] IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

No. 30737 En Banc

GEORGE E. CLINE, Respondent,

v.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No.
882, RALPH REINERTSEN, its Business Agent, and J. J.
ROHAN, its Secretary, Appellants.

OPINION—Filed June 3d, 1949

This action was instituted by George E. Cline against Automobile Drivers and Demonstrators Local Union No. 882, Ralph Reinertsen, its business agent, and J. J. Rohan, its secretary, to enjoin the defendants from in any way interfering with, molesting or damaging the business of plaintiff by picketing or otherwise, and to recover damages alleged to have been sustained as the result of the picketing of plaintiff's place of business by defendants.

Upon the filing of the complaint and the affidavit of plaintiff, the superior court of the state of Washington for King county, on May 13, 1948, issued a show cause order directed to the above named defendants, requiring them to appear on May 19, 1948, and show cause, if any they had, why a temporary restraining order should not issue pending the trial of the cause, restraining and preventing defendants from picketing plaintiff's place of business.

The cause came on to be heard on May 19, 1948, on the show cause order above referred to and upon the oral motion of defendants to dismiss the order to show cause, and the court, having considered the files and records [fol. 28] herein, the testimony introduced by the parties and the argument of counsel, and having on May 25, 1948, made and entered a written memorandum opinion, on the same day made and entered findings of fact, conclusions of law and a temporary injunction. By the temporary injunction, defendants' motion to dismiss plaintiff's application for a temporary restraining order was denied, and

defendants were restrained *pendente lite* from in any manner picketing plaintiff's place of business.

Defendants thereafter filed an answer to the complaint, wherein they admitted and denied certain allegations therein contained, and made certain affirmative allegations, the concluding paragraph being

"That in conducting the aforesaid picketing the defendants were merely exercising their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States."

The matter came on for trial on the merits on June 25, 1948, at which time counsel for the respective parties stipulated in open court that the case would be submitted for final judgment on the merits on the evidence theretofore introduced on plaintiff's application for a temporary restraining order, and it appearing from the decree entered that plaintiff further stipulated to waive his claim for damages, the court, having reconsidered the evidence introduced, and having reconsidered and reaffirmed the written memorandum opinion filed on May 25, 1948, and the findings of fact and conclusions of law made and entered on the same date, on June 29, 1948, made and entered its decree permanently restraining and enjoining defendants and each of them from in any manner picketing plaintiff's place of business. Defendants gave timely notice of appeal to this court from the judgment last above referred to.

[fol. 29] Appellants' assignments of error are that the trial court erred (1) in holding that the evidence does not establish a labor dispute, under the laws of this state; (2) in refusing to hold that appellants' right to picket respondent's place of business is authorized and protected by the first and fourteenth amendments to the constitution of the United States; (3) in permanently enjoining the peaceful picketing of respondent's place of business.

Before discussing our views of the facts and the law applicable thereto in this case, we desire to quote in full the written memorandum decision filed by Honorable Chester A. Batchelor, on May 23, 1948, as such memorandum decision expresses so fully and completely the trial court's theory of this case, and its reasons for the conclusions reached and the judgment entered.

"Being of the opinion that my oral decision on May 21st was perhaps prolix and covered discussion or argument concerning questions and matters which have become moot by reasons of the decision of the supreme court in the case of *Gazzam v. Building Service Employees*, 129 Wash. Dec. 455 [29 Wn. (2d) 488], I have decided, upon my own motion, to withdraw said oral decision and substitute therefor this written memorandum decision. It will be signed and entered prior to the signing and entry of findings of fact and order, and will supersede and take the place of said oral decision.

"The fundamental facts in this case, in my opinion, are, in ultimate effect, substantially identical with those in the case of *Hanke v. International Brotherhood of Teamsters etc. Union*, No. 392989 of this court. While it is contended in an able argument by counsel for the defendant that a distinction exists between the *Hanke* case and the case at bar, by reason of the former or past relationship between the parties to this action, I believe that the correct applicable test herein is the relationship between the parties at this time.

"The supreme court in the *Gazzam* case, *supra*, held that such picketing as involved herein should be enjoined, the court on page 467 [29 Wn. (2d) p. 500] saying:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.), 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved." (Italics mine.)

"My decision relative to picketing in the case of *Svenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, was reversed by the supreme court, and the supreme court in the subsequent *Gazzam* case expressly approved its previous decision in the *Svenson* case.

[fol. 30] "I concur in the able opinion of Judge McDonald in the *Hanke* case, *supra*; that the decisions of the supreme court in the *Svenson* and *Gazzam* cases are controlling in both the *Hanke* case and the case at bar. (See also *Walker v. Gilman*, 25 Wn. (2d) 557.)

"While I find that the picketing here in question was free from violence, threats of violence or interference with any employees of the plaintiff, such picketing, under the

Swenson and *Gazzam* cases, *supra*, is coercive and subject to injunction.

"Findings, conclusions and order granting to the plaintiff a temporary injunction against picketing *pendente lite*, upon the filing by the plaintiff of an approved bond in the sum of \$1500.00, may be prepared, served and presented for signature and entry."

Respondent, George Cline, had been engaged in the business of selling used automobiles at 3126 Eastlake avenue, Seattle, for about four and one-half years prior to May 19, 1948, the date of the hearing at which the testimony hereinafter referred to was introduced. He had never employed a salesman, but had done all the selling himself.

Automobile Drivers and Demonstrators Local Union No. 882 is a voluntary association, organized as a labor union and chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and it embraced among its membership persons employed and engaged in the business of selling used automobiles in the Seattle area. Defendants Ralph Reinertsen and J. J. Rohan, at all times herein mentioned, were, respectively, its business agent and secretary.

Sometime in 1945, respondent, as testified to by him, joined appellant union, under the following circumstances:

"Well, in 1945, after being threatened several times with a picket line and being promised that I would be driven out of business and if necessary out of town, I joined the union on a day when Mr. Rohan came to my place of business and says, 'We have a picket line down the street at Coast-In Service, it's been there a few weeks and has driven them out of business to the point where they are glad to sell out and leave.' He says, 'If you don't sign up with us now we'll have this picket line in front of your place of business next.' At that time I consulted some of the dealers I was acquainted with in the district and they informed me that if I wanted to do business in Seattle I had better sign up with the union. Q. And you joined the defendant union at that time? A. Yes. Q. Are you at the present time a member of the defendant union? A. No, I'm not."

[fol. 31] Mr. Reinertsen testified that respondent had been dropped from the union sometime in October, 1947, and was not a member of appellant's organization at the time of this hearing.

It may be stated here that Mr. Rohan, with whom respondent claimed to have had the conversation above quoted, and who was the secretary of appellant union, was not called as a witness in this case.

In the spring of 1946, respondent became a member of Independent Automobile Dealers Association of Seattle (hereinafter referred to as the Association), paying his initiation fee therein and one year's dues, from April, 1946, to April, 1947. He paid no further dues to the Association, and was not a member thereof on April 14, 1948, on which date a contract was entered into between the Association and appellant union.

On or about June 12, 1946, appellant union entered into a collective bargaining agreement with the Association, the first clause of which reads as follows:

"That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

This agreement remained in effect until April 14, 1948; at which time a new contract was entered into between the union and the Association, copy of which was introduced in evidence as defendant's exhibit 4. This was the contract in effect at the time of trial.

On the Friday preceding Labor Day of 1947, respondent called appellant union and requested a withdrawl card, [fol. 32] informing Mr. Rohan that he was quitting the union and was going to hang up a sign with the two words on it "Open Saturdays," and he did hang up such a sign. At that time appellant union objected to his quitting the union and opening Saturdays, on the ground that he was a member of the Association and therefore bound by the contract of June, 1946. Appellant further contended that

respondent was still a member of appellant union. Thereafter respondent opened his place of business on Saturdays, and continued to do so at all times, and his place of business was picketed from the Saturday preceding Labor Day in 1947, up until the date of the hearing herein, which occurred, as we have said, on May 19, 1948.

Respondent at no time has had in his employ any member of appellant union. While at the time the picketing commenced respondent did have two employees, they were not members of appellant union, their duties did not include the sale of automobiles, and there was no dispute of any kind between respondent and such employees. Upon the establishment of the picket line, these employees ceased to work for respondent, and respondent has had no employees in connection with his business from the date on which the picketing commenced to the date of the hearing.

Respondent's testimony as to the actions of the pickets is in part as follows:

"A. They parade up and down the sidewalk part of the time, and part of the time they set on the front of my cars. The part of the time that they parade up and down the sidewalk they manage to block driveways. I finally closed my main driveway so someone would not get run over there because they were forever stepping in front of an incoming or outgoing car. In addition to that, they've been taking down license numbers of people who stop there, and the method of procedure they use is fighting [frightening] a great many people away. They will get out there, one picket at each end of the automobile and holding up a big placard with a piece of paper on it and hold up a pencil and take down the number. When the owner of the car would ask what this is for they would reply, 'Well, you'll see,' and some customers have said, 'Well, do you think you can cause me trouble,' to which the pickets reply, 'You'll see,' and at this stage of the game most of the customers [fol. 33] flee the scene. Q. What effect has this had upon your business? A. Well, the effect on the sale of automobiles has been that it has dropped off to practically nothing, and previous to the picket line I hired a mechanic to keep the automobiles in operating condition. Since the picket line the mechanic fears to work on the premises, so I have no method of keeping my automobiles in operating condition. . . . Q. What has been your ex-

perience in so far as securing the delivery of merchandise to the premises? Have you had any difficulty in that respect? A. No truck driver will deliver merchandise to the premises. . . . Q. After these truck-drivers have made a delivery and you have received it in front of your premises, have they made any deliveries after that? A. No, they ceased making deliveries after that."

Appellant union, in accordance with the new contract entered into with the Association in April, 1948, demanded of respondent, as a condition to the removal of the pickets, that respondent refrain from opening his place of business after one o'clock on Saturdays, and that respondent employ a member of appellant union, such employee to be compensated by being paid seven per cent of all sales made at respondent's place of business, irrespective of whether such sale was made by the employee or by respondent.

Picketing was normally carried on by two pickets, although at times there were as many as four in front of respondent's place of business. The pickets carried the familiar "sandwich sign," stating that respondent's place of business was unfair to appellant union. The picketing was peaceful, in that the pickets neither used force, nor threatened physical violence, nor actually molested any person seeking to enter or leave respondent's place of business.

The substance of the foregoing statement is contained in the court's findings of fact, and there is no question in our minds but that the court's findings are borne out by the great preponderance of the evidence. The trial court concluded as follows:

[fol. 34]. "That no labor dispute exists within the meaning of the laws of the state of Washington, and said picketing is, therefore, unlawful, and the plaintiff is entitled to an injunction, *pendente lite*, restraining and enjoining the same. . . .

"That said picketing was coercive, and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States."

As we have hereinbefore stated, on stipulation of counsel that no additional testimony would be offered, the

court, at the time it entered the decree from which this appeal is taken, reaffirmed its findings and conclusions entered on May 25, 1948.

Appellants contend that a "labor dispute" was shown to exist in this case between respondent and appellant union; under the definition of that term as found in Rém. Rev. Stat. (Sup.), § 7612-13; that in picketing respondent's place of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States.

Appellants further contend that the facts in this case do not bring it within the principles announced in *Gazzam v. Building Service Employees International Union*, 29 Wn. (2d) 488, 188 P. (2d) 97.

We are of the opinion this case is controlled by the principles announced in the *Gazzam* case, *supra*. We are of the opinion that the testimony is undisputed that at the time this action was commenced, at which time respondent's place of business was being picketed by appellant union, respondent was not a member of appellant union, and had not been since the time appellant union had started to picket his place of business, namely, the Saturday before Labor Day of 1947; that respondent was not a member of the Association, and had not been since April, 1947, and was not a party to the contract entered into between appellant union and the Association in April of 1948; that respondent did not have in his employ at the time this [fol. 35] action was commenced, nor had he ever had in his employ, a member of appellant union.

We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions.

We see no good purpose in again reviewing and analyzing the cases set out and discussed in the *Gazzam* case. We appreciate fully what has been said by the supreme court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case.

We may say further that we are entirely in accord with the majority opinion in the case of *Hanke v. International Brotherhood of Teamsters etc., Local No. 309*, — Wash.

Dec. —; and reference is here made to that case for a further discussion of our own cases, including the *Gazzam* case, and cases from the supreme court of the United States.

For the reasons herein assigned, the judgment of the trial court should be, and it is, hereby affirmed.

JEFFERS, C. J.

I concur in the result.

SCHWELLENBACH, J.

We concur:

STEINERT, J.

SIMPSON, J.

HILL, J.

GRADY, J.

We dissent.

MALLERY, J.

BEALS, J.

ROBINSON, J.

[fols. 36-44] IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

No. 30737

King County No. 395781

GEORGE E. CLINE, Respondent,

vs.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No.
882, RALPH REINERTSEN; its Business Agent, and J. J.
ROHAN, its Secretary, Appellants.

JUDGMENT—July 6, 1949

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 6th day of July, A. D. 1949, on motion of McCune and Yothers, of counsel for respondent, considered, adjudged and decreed, that the

judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said George E. Cline have and recover of and from the said Automobile Drivers and Demonstrators Local Union No. 882, Ralph Reinertsen, its Business Agent, and J. J. Rohan, its Secretary, and from Continental Casualty Company, surety, the costs of this action taxed and allowed at Fifty-nine and 50/100 (\$59.50) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 45] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. a]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN
AND FOR KING COUNTY

No. 395781.

GEORGE E. CLINE, Plaintiff,

vs.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882; RALPH REINERTSEN, its Business Agent, and J. J. ROHAN, its Secretary, Defendants.

STATEMENT OF FACTS—Filed in Superior Court July 27, 1948—in Supreme Court Dec. 6, 1948.

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN
AND FOR KING COUNTY

No. 395781.

GEORGE E. CLINE, Plaintiff,

vs.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882; RALPH REINERTSEN, its Business Agent, and J. J. ROHAN, its Secretary, Defendants.

BE IT REMEMBERED: That the above entitled and numbered cause was heard by the Honorable Chester A. Batchelor,

one of the Judges of the above entitled Court, sitting in Department No. 3 thereof, beginning Wednesday, May 19, 1948, at 10:00 o'clock A. M.

The Plaintiff was represented by Mr. Calmar M. McCune, of Messrs. McCune & Yothers, Attorneys at Law.

The Defendants were represented by Mr. Samuel B. Bassett, of Messrs. Bassett & Geisness, Attorneys at Law.

Witnesses were sworn and examined, documentary evidence was introduced, and the following proceedings herein were had, to-wit:

[fol. 2] The Court: Gentlemen, are you ready in the case of Cline versus Automobile Drivers Union?

Mr. McCune: Yes, Your Honor.

Mr. Bassett: Yes, Your Honor.

The Court: Proceed. It comes upon show cause, doesn't it?

Mr. Bassett: Yes, Your Honor.

The Court: All right. I have read the pleadings.

Mr. McCune: Is Your Honor familiar with the Gazzam case, on which this is based?

The Court: Oh, I think I am familiar with all the late decisions.

Mr. McCune: Very well. I don't think that the matter requires any discussion then, unless Counsel wishes to make an opening statement.

Mr. Bassett: Yes, Your Honor, I would like to make—

The Court: You haven't filed any controverting affidavit.

Mr. Bassett: No, Your Honor, I haven't. I just got back from the Supreme Court where I had two cases yesterday, and I felt that inasmuch as they are asking for a temporary injunction the oral evidence must be heard in any event, and so we are going to present our response.

Your Honor, in this case the situation is this: The plaintiff here is a used car leader. He operates, I believe he operates his business alone. He has no employees, and [fol. 3] that is what causes Counsel to refer to the Gazzam case. However, this plaintiff is bound by contract, has been bound by contract since 1946, a contract made and negotiated by the Independent Automobile Dealers Asso-

ciation with the defendant Union, concerning wages, hours, hours of business, opening and closing hours, holidays, and things of that kind.

The evidence will show that he became a member in 1946, and a contract was negotiated in 1946 on the 12th day of June which provided that all second-hand automobile dealers shall close on Saturdays. I am not too certain about what the evidence will show, as to whether or not he was a member when the contract was negotiated and signed or whether he became a member afterwards. In any event, when he became a member of the Automobile Dealers Association he became bound by this agreement. That would necessarily follow because he is in competition with all the other independent dealers and unless he was bound by their contract obviously they wouldn't want him in the Association. In other words, they wouldn't want him open on Saturdays while they were bound by contract to close on Saturdays.

In any event, the year preceding that Mr. Cline joined the defendant union, and he was a member of the Union at the time he joined the Independent Dealers Association. He became a member of the Union on March 12, 1945. He was initiated and took the obligation to abide by all the rules and regulations of the Union at that time, and he remained a member in good standing until October, 1947. He paid dues continuously from 1945 until June, 1947. In [fol. 4] August, 1947, he commenced opening his place of business on Saturdays, and when the Union representative went to him about it and told him that he was in violation of the contract he said that well, the Taft-Hartley law now had changed the situation and he wasn't bound by any Union regulations or anything else and he was going to run his business to suit himself, in substance. The result was that his place was picketed by the Union in August, 1947, and has been picketed continuously ever since, and he has continued to open on Saturdays and do business on Saturdays. He wasn't dropped as a member of the Union until October, '47, for non-payment of dues.

So we have here a member, Your Honor, who is a member of the Independent Dealers Association, who became a member in 1946, became bound by a contract that they had, and at the time he did that he was already a member of the defendant Union and he was obligated to abide by its

rules and regulations, and one of its rules and regulations, of course, pertains to this matter.

He continued to be a member of this Association, Your Honor, during all of this year and, so far as we know, he is still a member, at least he has never given this Independent Automobile Dealers Association official notice that he was withdrawing from it.

In March and April of this year, the Independent Dealers Association, having given notice to the Union that they wished to reopen this contract, negotiated a new agreement which also concerned the matter of Saturday opening. The plaintiff, Mr. Cline, attended the meetings of this Association, [fol. 5] at which time the amendment or modification of the old contract was discussed and voted upon, and he participated in those meetings and addressed the assembly. At that time he was in arrears in the payment of his dues to the Association, and he probably will contend that he was not a member. However, he has never withdrawn, he was never dropped, he wasn't suspended by the Association.

Now, it is our position that there is a real labor dispute with this man by reason of contract, aside from his membership in the Union, and we shall ask the Court later when the time comes to file an answer here, ask that he be required specifically to perform this contract.

I think that gives Your Honor some idea about our position here.

The Court: All right, gentlemen, you may produce any testimony.

Mr. McCune: Mr. Cline, will you take the witness stand.

The Court: Of course this is not a trial on the merits.

Mr. Bassett: That is right. It is an application for a temporary injunction.

The Court: I see from the file no restraining order has been issued.

Mr. Bassett: That is right.

[fol. 6] GEORGE CLINE, the Plaintiff, called as a witness in his own behalf, was examined and testified as follows:

Direct examination.

By Mr. McCune:

Q. Will you state your name?

A. My name is George Cline, C-l-i-n-e.

Q. What business are you engaged in, Mr. Cline?

A. The used car business.

Q. Where is that located?

A. 3126 Eastlake Avenue.

Q. How long have you been in that business?

A. About four and a half years.

Q. In connection with that business have you got any relationship with the defendant Union in this case?

A. Yes, I have.

Q. What is the relationship at the present time in so far as your business is concerned, your relationship with this Union?

A. At the present time we have a picket line which keeps out the greater portion of the prospective customers.

Q. How long has that picket line been in existence?

A. Since the Saturday preceding Labor Day.

Q. Of what year?

A. 1947.

Q. How many pickets are there normally in this picket line?

A. There are normally two.

Q. And how do they conduct themselves?

A. They parade up and down the sidewalk part of the time, and part of the time they set on the front of my cars. [fol. 7] The part of the time that they parade up and down the sidewalk they manage to block driveways. I finally closed my main driveway so someone would not get run over there because they were forever stepping in front of an incoming or outgoing car. In addition to that, they've been taking down license numbers of people who stop there, and the method of procedure they use is fighting a great many people away. They will get out there, one picket at each end of the automobile and holding up a big placard with a piece of paper on it and hold up a pencil and take down the number. When the owner of the car would ask

what this is for they would reply, "Well, you'll see," and some customers have said, "Well, do you think you can cause me trouble," to which the pickets reply, "You'll see," and at this stage of the game most of the customers flee the scene.

Q. What effect has this had upon your business?

A. Well, the effect on the sale of automobiles has been that it has dropped off to practically nothing, and previous to the picket line I hired a mechanic to keep the automobiles in operating condition. Since the picket line the mechanic fears to work on the premises, so I have no method of keeping my automobiles in operating condition.

Mr. Bassett: Well, I object to what he says about the mechanic fears as calling for a conclusion and hearsay.

The Court: I will hear it subject to your objection.

By Mr. McCune:

Q. Did the mechanic refuse to—

[fol. 8] The Court: I am unable to determine at this time whether it is a mere conclusion or not.

By Mr. McCune:

Q. —to work on your premises?

A. The mechanic did refuse to work on the premises.

Q. Was this mechanic a member of the defendant Union in this case?

A. No, he is not.

Q. What has been your experience in so far as securing the delivery of merchandise to the premises? Have you had any difficulty in that respect?

A. No truck driver will deliver merchandise to the premises. Some truck drivers who have delivered merchandise to the premises or who have stopped in front of my place of business so I could go out through the picket line myself and get the merchandise have found themselves in trouble with their labor union.

Mr. Bassett: Just a minute. I object to that as calling for a conclusion and hearsay.

The Court: The last part may be stricken.

By Mr. McCune:

Q. After these truck drivers have made a delivery and you have received it in front of your premises, have they made any deliveries after that?

A. No, they ceased making deliveries after that.

Q. Mr. Cline, when and under what circumstances did you, if ever, join the defendant Union in this case?

A. Well, in 1945, after being threatened several times with a picket line and being promised that I would be driven out of business and if necessary out of town, I joined the Union on a day when Mr. Rohan came to my place of business and says, "We have a picket line down the street at Coast-In Service, it's been there a few weeks and has [fol: 9] driven them out of business to the point where they are glad to sell out and leave." He says, "If you don't sign up with us now we'll have this picket line in front of your place of business next." At that time I consulted some of the dealers I was acquainted with in the district and they informed me that if I wanted to do business in Seattle I had better sign up with the Union.

Q. And you joined the defendant Union at that time?

A. Yes.

Q. Are you at the present time a member of the defendant Union?

A. No, I'm not.

Q. When did you cease to be a member of the defendant Union?

A. On the Friday preceding Labor Day of 1947 I phoned the labor union and talked to Mr. Reinertsen and requested a withdrawal card. I informed him that I was simply quitting the Union and would hang up a sign with the two words on it, "Open Saturday".

Q. Did you do that?

A. I did.

Q. Did the Union later drop you as a member?

A. I've had no communication with them. In the past I've received several letters from them. Every time I would be delinquent on my dues they would send me a letter and instruct me that if I did not pay my dues I would promptly be dropped from the rolls.

Q. That was prior to—

A. Yes.

Q. —this August date?

A. That's right.

[fol. 10] Q. Under what circumstances did you join the Independent Automobile Dealers Association?

A. The labor union which I had joined, at one of their meetings the majority of the members voted to negotiate with the dealers for Saturday closings. All the dealers who were members of the labor union were promptly informed that they must close their place of business Saturdays.

Mr. Bassett: Just a minute, I object to that as hearsay. The Court: Objection sustained.

By Mr. McCune:

Q. Who informed you that you must close your place of business on Saturdays?

A. I was at the labor meeting where the dealers were all informed of that, and the following Saturday —

Q. Now, I just asked you who informed you.

A. Mr. Rohan.

Q. And what was his capacity at that time?

A. He was Secretary of the labor union.

Q. Of the defendant Union?

A. Yes.

The Court: Well, that may stand, then. He was present at the meeting.

By Mr. McCune:

Q. Then what followed?

A. I didn't close up the following Saturday. I had been working on my lot and Mr. Reinertsen came out and told them they had better leave the premises, that the place was supposed to be closed, and when they didn't leave he followed them around, waving his hands at them as if they was chickens, telling them they had better pack up and leave.

[fol. 11] Q. Who was Mr. Reinertsen?

A. Mr. Reinertsen is Business Agent for that defendant Union.

Q. Were these employees members of the defendant Union?

A. No, they were not.

Q. Were they salesmen?

A. No, they were not.

Q. And when did that take place?

A. That took place in April of 1947.

Q. And then what—

Mr. Bassett: Where was this? Where was this?

A. On my used car lot at 3126 Eastlake Avenue.

By Mr. McCune:

Q. Then what followed that, Mr. Cline?

A. I was talking to a number of the dealers around there and they interested me in going down to the Dealers Association and becoming a member of that, with the idea in mind that in strength there would be unity and that the Dealers Association with a greater number of members would be able to resist the desire of the labor union to force them to close Saturdays.

Q. And at that time you joined the dealers union, the Dealers Association?

A. That is right.

Q. Was that in 1946 or 1947?

A. Let's see, that was 1946, the spring of '46.

Q. So that when Mr. Rienertsen came out, when was that?

A. That was in the spring of '46.

Q. That was in the spring of '46?

A. Yes.

Q. Rather than the spring of '47 as you previously testified?

A. That is right, it was two years ago.

[fol. 12] Q. And what did you do to join the Independent Automobile Dealers Association?

A. I paid them the initiation fee and one year's dues.

Q. And that year's dues was to cover what year?

A. From April of 1946 to April of 1947.

Q. Did you pay any more dues?

A. No, I did not pay any more dues and ceased attending meetings altogether.

Q. For how long a period did you refrain from attending any meetings of the Association?

A. I attended no further meetings until the spring of 1948, when I was asked to come as a guest to meetings called, at which many automobile dealers were guests who

were not members of the Association, they were invited to attend for the purpose of hearing what the Association had to offer and to be asked to become members.

Q. Did you in any way make it known at those meetings or otherwise that you were not a member of the Association?

A. Yes, I did. Everybody I talked to I informed that I was not a member, and when they had discussion on the floor of everybody present, both Association members and non-members, I took part in the discussion and in addressing the group informed them that I was not a member of the Association.

Q. Did they ever solicit further payment of dues from you?

A. No, they did not. However, a number of them expressed a desire to see me join the Association again.

Q. Was the Association in any way authorized by you orally or in writing to negotiate a contract on your behalf with the defendant Union in the spring of 1948?

[fol. 13] A. No.

Q. What demands are made upon you, what demands have been made upon you by the defendant Union in this case as a condition to stopping the picketing of your premises?

A. They demand that I sign a contract similar to the one, or possibly identical to the one which the Used Car Dealers Association has signed, and that I hire salesmen to sell my cars instead of selling them myself.

Q. And what about Saturdays?

A. And the contract calls for closing at one o'clock Saturdays.

Q. Who made the demand that you do these things?

A. Mr. Reinertsen.

Q. When did the Union first contend that you were still a member of the Association?

A. At the time I informed them that I was quitting the labor union and opening Saturdays they says, "You can't do this, you belong to the Association." I replied that I had paid no dues or initiation fees or anything since 1946, had ceased attending their meetings and was therefore no longer a member.

Q. And who in the Union did you give that advice to?

A. Mr. Rohan.

Mr. McCune: You may examine, Counsel.

Cross-examination.

By Mr. Bassett:

Q. Have you done business in any other place besides Seattle, Mr. Cline?

A. No, I have not.

[fol. 14] Q. When did you commence your business here in Seattle?

A. I believe it was in 1944 that I first did business from a regular licensed premises.

Q. What do you mean by "licensed premises"?

A. Well, previous to that I sold about two or three cars a year. I would buy a car and drive it, and if somebody wanted to buy it I sold it, and some people might contend that that was doing business.

Q. Were you ever engaged in any other business?

A. I operated a service station for a couple of months.

Q. Your own business?

A. I leased it from an oil company.

Q. You have been engaged in this business now for four and a half years, you say?

A. Approximately that.

Q. Have you ever employed any salesmen?

A. Never.

Q. You always sold yourself?

A. That is right.

Q. About how many cars do you have on your lot, average, since 1947, since August? I mean cars for sale.

A. Oh, I own approximately fifty vehicles, of which about thirty are in salable condition.

Q. You employ no help of any kind?

A. I have employed no help of any kind since August of '47.

Q. You said you employed a mechanic.

A. I did up until the picket line come. I no longer have a mechanic.

Q. And who else did you employ before August, 1947, besides the mechanic?

[fol. 15] A. I had a man working part time as a general handyman, roustabout, around the lot, and—

Q. Doing what?

A. And early in 1946 in the latter part of '46 and the early part of '47 I employed a bookkeeper.

Q. What did this roustabout do, help you sell cars?

A. No, he did not.

Q. What did he do?

A. He run errands and washed cars and fixed flat tires and changed batteries, installed seat covers and welded broken bumpers, a multitude of odd jobs.

Q. He was sort of a mechanic too, wasn't he?

A. He had previously been an aircraft mechanic and now has one crippled hand.

Q. This mechanic, was he a member of the Machinists Union?

A. No, he was not.

Q. Not a union man at all?

A. No. He is a crippled man.

Q. What?

A. He is a crippled man, and he was learning to become a salesman.

Q. I am speaking of the mechanic now. You said you had a mechanic there.

A. The mechanic I employed was a member of Local 289 of the Automobile Machinists, an independent union.

Q. Yes, and you say he quit after the pickets were stationed in front of your place?

A. Yes.

Q. Have there always been two pickets stationed there?

A. No. Sometimes there's only one, sometimes there [fol. 16] have been three and sometimes four.

Q. Four pickets?

A. Yes.

Q. When was that?

A. I don't remember the exact date, but there was a short time when they had four pickets there, a matter of a few days, I believe.

Q. Did they all wear signs?

A. Yes, they all wore signs.

Q. All four of them?

A. I would say they do, they did.

Q. Well, did they?

A. Yes.

Q. Most of the time there is only one picket there, isn't that right?

A. No, most of the time there's two pickets.

Q. Are you talking about the last month or so, or are you talking about last August?

A. Ever since they have opened up, the major part of the time there's been two pickets.

Q. Do these pickets wear a sign?

A. Yes, they wear signs.

Q. Is the name of the Union on there?

A. Yes.

Q. What does the sign say, that you are unfair to organized labor?

A. The sign says, "This firm unfair to Local 882 of A. F. of L."

Q. How large a lot do you have there? Is it on Eastlake, Eastlake Avenue?

[fol. 17] A. That's right. It's about a hundred feet long and about, oh, about an average of, seventy feet wide, I'd say, or eighty feet wide. It's an odd shaped lot. It isn't square.

Q. You have a hundred foot frontage on Eastlake Avenue?

A. Yes, approximately that. I've never measured it.

Q. Yes, and you have two driveways, I take it?

A. I have one driveway now. I closed up the main driveway.

Q. You did that?

A. Yes.

Q. When did you close it?

A. I closed that up a few months ago. I am parking cars in it.

Q. You are parking cars in it?

A. Yes.

Q. You just have the one driveway now?

A. Yes.

Q. This is just a vacant lot, isn't it? Is there any building on it?

A. I have a small office building and a small repair shop.

Q. In the back?

A. In the middle of the lot, kind of.

Q. Now, you say that these pickets get in the way of automobiles?

A. They did as long as my main driveway was open. I could not drive in or out of the driveway myself, let alone

a customer coming in, without jabbing on my brakes to keep from running over a picket.

Q. You say the pickets deliberately stood in the way?

A. They deliberately walked in the way. If they had [fol. 18] just crossed the driveway and the motorist stopped and the driveway was clear he would be surprised by the picket wheeling around sharply and walking right back across the driveway.

Q. Did you ever ask the pickets to stay off the driveway?

A. No, I asked them what was the idea of making such a nuisance of themselves in the driveway at one time, and they says, "This is a public sidewalk, we can walk where we feel like."

Q. You said they sat on your cars?

A. Yes. They spend a good deal of time setting on—

Q. They went in your lot and sat on your cars?

A. Yes, that's right.

Q. Inside the lot?

A. Inside the lot.

Q. Isn't it a fact that they leaned on the car if the car projected out over the sidewalk?

A. No.

Q. Don't your cars project right out to the sidewalk?

A. No. Some of them come to the sidewalk, some of them are six inches, some of them are a foot from the sidewalk. They pick the one that looks the most comfortable to set on, whether it is six inches or a foot from the sidewalk.

Q. Did you ever ask them to get off of it? Have you ever requested a picket not to do that?

A. No. The only time I asked them to move is if I'm showing a car.

Q. Did you ever ask a picket when he was leaning against a car, sitting on it, to remove himself?

A. No, I did not.

[fol. 19] Q. You never did. How many times has that happened?

A. It happens almost daily.

Q. And you have never asked them not to do it?

A. No.

Q. Now, the pickets haven't sworn at anybody or threatened anybody with bodily harm, have they? Have you ever heard them threaten anybody with bodily harm?

Q. A month ago. What was the occasion, Mr. Cline?
[fol. 30] How did it come about?

A. I phoned up the Union hall and talked to Mr. Rohan.

Q. You phoned?

A. Yes.

Q. And what did you ask him?

A. I told him I was interested in getting rid of the picket line and if they wanted to talk to me that I would talk to them.

Q. And what did he say?

A. He said he would let me know.

Q. Did he?

A. No, he did not. However, Mr. Reinertsen called at my place of business the following day.

Q. And did you have some discussion with him about it?

A. Yes, I did.

Q. Did he give you the Union's terms?

A. Yes.

Q. And he asked you to either close—did he ask you to close your place at one o'clock on Saturdays?

A. Yes.

Q. Did you refuse to do that?

A. No.

Q. You agreed to do that, is that right?

A. I neither agreed nor refused.

The Court: You what?

A. I neither agreed nor refused.

By Mr. Bassett:

Q. He also asked you to employ someone to sell cars who would become a member of the Union?

A. He asked me to employ a man to sell cars who they would send me from the Union hall.

[fol. 31] Q. Was anything said about your becoming a member of the Union again?

A. I told him that it would be impossible for me to pay a salesman, and that if there was anything done in connection with it at all it would be if they reinstated me as a member of the Union without expense to me.

Q. Did he tell you whether you could or could not be reinstated?

A. He told me that I could never be reinstated again as far as he knew at that time.

Q. And that was because of what had occurred the previous August?

A. That is right.

Mr. Bassett: I have no further questions.

Redirect examination.

By Mr. McCune:

Q. Mr. Cline, did Mr. Reinertsen say anything at that time about this present contract, when he talked to you a month ago?

A. Yes, he did.

Q. What did he say?

A. He said that was the contract I would have to sign.

Q. He said that you would have to sign it?

A. Yes.

Q. Did he say anything about your being already bound by it?

A. When he came to my place of business he says, "Why, you're already a member of the Association," and I says, "I am not. I've paid no dues since 1946 and decline any attachments with them."

[fol. 32] Q. If you complied with the contract and with the request of the Union by hiring a Union salesman, what would be your situation if you were to sell cars yourself?

A. If I sold cars myself I would have to pay the commission to the salesman.

Mr. Bassett: I object to that.

Mr. McCune: I would like to have him—

By Mr. McCune:

Q. What was the answer?

A. If I sold cars myself I would have to pay the commission to the salesman just the same as if the salesman had sold it.

Q. You mentioned that your mechanic left when this picket line was set up. Did he leave because of any labor dispute with you, between yourself and the mechanic?

A. No.

Q. Did you have any dispute with his Union?

A. No.

Q. You testified that it was necessary for you to buy parts and go out and get them occasionally.

A. Yes.

Q. What happens to your lot in that situation? Are cars sold or does it just stand there?

A. It just stands there. I have to lock the door.

Q. Now, Mr. Cline, when did you start attending Union meetings in 1948?

Mr. Bassett: Union meetings or Association?

Mr. McCune: I mean—pardon me, Association meetings.

A. I believe it was March.

By Mr. McCune:

[fol. 33] Q. Had you attended any meetings prior to that of dealers or anyone?

A. I had attended a dealers meeting which the one who invited me to the meeting was very careful to specify that it was not an Association meeting but was a meeting of dealers.

Mr. Bassett: Just a minute. That is hearsay. I object to that.

By Mr. McCune:

Q. Well, that meeting was—

The Court: Perhaps the motive might go to his intent and good faith. Of course, it is not proof of any substantive matter.

Mr. McCune: No.

By Mr. McCune:

Q. Then what was the next meeting that you attended?

A. The next meeting I attended, I believe it was held in the Eagles Hall in Ballard by the Association for the purposes of inviting a lot of dealers down there to try and induce them to join the Association.

Q. Now, were you invited as a member of the Association or as a dealer who might reaffiliate with the Association?

A. I was invited as a guest who might reaffiliate.

Q. Were there other men there who did not belong to the Association?

A. Yes.

Q. How many would you say?

A. There were approximately sixty members present and about eighteen of them were Association members.

Q. There were in your opinion approximately forty-two who were not Association members out of sixty, is that right?

A. Yes.

[fol. 34] Q. And what was the next meeting that you attended?

A. The next meeting that I attended was in the Benjamin Franklin Hotel.

Q. And when was that?

A. Oh, I don't remember the date. It was—it followed a couple of weeks later, I guess, than the one at the Eagles Hall in Ballard.

Q. And what was that meeting called for?

A. So many of the dealers wouldn't join the Association because they did not want to be bound by that contract, so this meeting was called for the purpose of hearing the opinion of legal talent as to how the contract would affect them if they joined.

Q. And how many were present there?

A. As I recall, there were approximately sixty-five.

Q. And about how many of those would you say were non-members of the Association?

A. About thirty-five or forty.

Q. When was the next meeting that you attended?

A. The next meeting, as I recall, was at the Eagles club-room in Ballard.

Q. And what was that meeting, what was the purpose of that meeting?

A. As I recall, it was for some discussion on the contract. However, I came when the meeting was practically over. I came the last ten minutes of it, and the main business of the meeting had already been closed and they were taking up another minor topic.

Q. Were dealers other than Association members attending that meeting?

A. I can't say that I have.

Q. You haven't heard them swear at anybody either, have you? I mean going in and out of—

A. Yes, I have.

Q. At whom?

A. They have sworn at me, and also they've sworn at some of the customers.

Q. Well, who? Can you name one?

A. One of them definitely I could name. His name is Dunmire, Lowell Dunmire.

Q. And what was he doing at your place?

A. He came there to pay me some rent and the pickets started taking down his license number and thenceforth got into a quarrel with them.

Q. Oh, he quarreled with the picket?

A. They also quarreled with him.

Q. Yes. He didn't like the idea of having his license number taken down?

A. Not too well.

Q. I see. And that was what started that?

A. That was the beginning of it.

Q. Yes, that was the beginning of it. And you no doubt did nothing to incur the pickets swearing at you?

[fol. 20] No, I did not.

Q. You were perfectly orderly and minding your own business?

A. That is right.

Q. Who was the picket, do you know?

A. It was an elderly gentleman named Denny.

Q. And what was the occasion of that?

A. Well, I come walking along the sidewalk and he engaged me in conversation and—

Q. Did he know you?

A. Yes, he knew me.

Q. He knew you. A conversation about that?

A. Something about the operation of the business.

Q. Did you swear at him?

A. No, I did not.

Q. You didn't? What did you say to him?

A. I do not recall the exact words of the conversation.

Q. You don't recall why he swore at you?

A. He swore at me because I disagreed with some statement or other he made:

A. I also resigned as a member of the Automobile Dealers Association as of April 14th, prior to the signing of [fol. 40] this new contract.

Q. Did you attend meetings of the Automobile Dealers Association during the spring of 1948?

A. I did.

Q. Were those meetings attended by persons other than members of the Association?

A. I was invited. I didn't become a member of the Association until possibly five weeks before the '48 contract was signed on April 14th. I was invited as an independent dealer, being told that we were trying to get strength enough to test the legality of the Union contract which at that time we couldn't determine had a termination clause in it.

Q. And were those meetings attended by a large number or a small number of men who were not members of the Association?

A. Well, I'd say that most of them were attended by—the majority were not members.

Q. Was Mr. Cline at some of those meetings?

A. Yes, I saw Mr. Cline at practically all of them.

Q. Did you ever hear him make any statements at any of those meetings relative to his membership in the Association?

A. He told me and he told others in my presence that he—

Mr. Bassett: Just a minute. Told who?

A. He told me and others in my presence that he at one time belonged to the Association and belonged to the Union, but he had no intention of affiliating again.

By Mr. McCune:

Q. Was that during the course of one of the meetings which you attended?

[fol. 41] A. He stated that on at least one occasion at one meeting.

Q. Publicly?

A. Yes, in my presence and I'd say two other men who I could name.

Q. What was the statement?

A. I do not recall the statement.

Q. You do not recall the statement. Those are the only two occasions that you can recall where any swearing occurred?

A. Those are the only two occasions I definitely took note of.

Q. Yes. There has been no violence, no one was ever struck?

A. None other than violent words.

Q. I say physical violence.

A. No physical violence.

[fol. 21] Q. You have mentioned the violent words, haven't you?

A. I don't recall having previously mentioned that they were violent.

Q. Well, you said there was swearing or violent words?

A. That is a matter of opinion.

Q. Yes. Well, that is what you referred to when you said "violent words"?

A. The swearing was conducted in a violent tone, therefore violent words.

Q. Yes. What merchandise do you sell there besides used cars?

A. At present I sell no merchandise besides used cars.

Q. What merchandise do you use there?

A. Automobile parts.

Q. You repair automobiles there, do you?

A. I used to.

Q. Anything else?

A. That is all.

Q. No other merchandise?

A. No.

Q. When you speak of deliveries being stopped, you mean the deliveries of supplies or parts?

A. That is right.

Q. Nothing else?

A. Nothing else.

Q. Have you ever driven to buy parts yourself?

A. Yes.

Q. And hauled them yourself?

A. Hauled them myself.

Mr. Bassett: I object to Counsel's word "publicly". Now, he has told the truth about that.

The Court: Well, he has already answered the question.

Mr. McCune: Yes.

By Mr. McCune:

Q. Did you attend a meeting of the dealers at the Benjamin Franklin Hotel?

A. I did, on two occasions at least.

Q. When were those meetings held?

A. I would say between the middle of February and the 1st of April.

Q. And at that time was anything said at either of those meetings about the payment of dues to the Association?

A. Yes.

Q. What was said?

Mr. Bassett: Who said it?

A. Mr. Phil Cook. That was the president, I think, or acting president of the Association at that time. We decided we needed some strength and he asked for all those who would care to join the Association for the purpose of building up a fund to get attorneys to represent us to join, so he possibly got thirty or forty new members, and then I think at the meeting following—I think there was a meeting, however, in Ballard in between. At the meeting following he asked that all members or those who cared to—

[fol. 42] Mr. Bassett: Did you attend that, Mr. Miller?

A. I did.

A. (Continuing) —all members and all members who cared to remain in the Association to at that time pay their dues. I paid my dues.

By Mr. McCune:

Q. Was Mr. Cline present at that meeting?

A. Mr. Cline was present at that meeting and did not pay his dues.

Mr. McCune: That is all.

Q. Now, when you joined the Union, I understood you [fol. 22] to say you talked to some dealers.

A. That is right.

Q. About it, is that right?

A. That is right.

Q. And they told you that if you wanted to do business in Seattle you better join the Union?

A. That's right.

Q. Is that right?

A. That is right.

Q. And after that you did join the Union?

A. After a little pressure was applied by the officials of the Union.

The Court: After what?

A. A little pressure.

By Mr. Bassett:

Q. What do you mean by that?

The Court: What do you mean by "pressure"?

A. I mean when they repeatedly come to my place of business and threatened me with picket lines if I didn't join and promised me that these picket lines would drive me out of business.

By Mr. Bassett:

Q. Who did that?

A. Jim Rohan.

Q. That was in 1945, was it, Mr. Cline?

A. That was previous to my joining the Union. That must have been '45.

Q. These dealers you talked with were members, were they, of the Union?

A. Some of them were Union members, I believe.

Q. Mr. Cline, didn't you have a choice at that time of employing one Union salesman or joining the Union yourself?

[fol. 23] A. That is right.

Q. And you elected to join the Union rather than employ a salesman?

A. Inasmuch as I could not hire a salesman, couldn't pay him, I had to join the Union.

Q. Well, you could have hired a salesman but you preferred not to, didn't you?

A. I could have if I'd had the money to pay him.

Q. Yes. Well, salesmen are paid on a commission basis, are they not?

A. That is right.

Q. If they don't sell they are not paid, are they?

A. Yes, they have a guarantee.

Q. Now, this picketing of which you complain has been going on continuously since August, 1947?

A. Yes.

Q. And it started when you commenced opening your place of business on Saturdays?

A. That is right.

Q. You told the Union that you were going to do it, didn't you, that you had a sign all prepared?

A. That is right.

Q. And that you weren't going to pay any more dues to the Union?

A. That's right.

Q. When was it you say you joined the Dealers Association, the Independent Automobile Dealers Association?

A. In 1946, I believe it was April. Anyway it was the spring of the year.

Q. You were a member of the Union at that time in good standing, were you not?

[fol. 24] A. Yes, I was.

Q. And what was it that persuaded you to join the Association? Did anybody threaten you?

A. I was being threatened with a picket line if I didn't close Saturdays. I joined the Association because at the time the members of the Association thought they were going to be strong enough to prevent themselves from having to sign a contract with Saturday closing in it.

Q. In April of that year, Mr. Cline, you had been closing on Saturdays, hadn't you?

A. No, I had not been.

Q. You were a member of the Union, weren't you?

A. That's right.

Q. And the contract provided that the used car dealers should close on Saturdays, didn't it, the 1946 contract?

A. I joined at the time the contract was being negotiated.

Q. You did?

A. Yes. Prior to that time we were open Saturdays.

Q. You joined the Association in April, you say?

A. Approximately that time. I haven't the date before me.

Q. And do you recall the contract was signed in June?

A. I don't know exactly the date the contract was signed.

Q. At any rate it was being negotiated at that time, wasn't it?

A. That's right. In fact, I sat in the meetings when it was being negotiated.

Q. Yes. You are familiar with the contract, are you not, sir?

A. No.

Mr. Bassett: Mark this, please.

[fol. 25] (Copies of contracts between Automobile Drivers and Demonstrators Local Union No. 882 and Seattle Automobile Dealers Association, King County Dealers Association and Independent Used Car Dealers Association, dated June 20, 1946, was marked Defendants' Exhibit No. 1 for identification.)

By Mr. Bassett:

Q. Have you ever seen a copy of it?

A. I have seen that little red book, but I don't know if that is the contract.

Q. Have you seen this book, Defendants' Exhibit 1 for identification?

A. Yes.

Q. The Union had this printed and distributed to the dealers, did it not?

A. I believe that was the condition.

Q. And it says on here June 20, 1946, the date of it?

A. Yes. I believe if you will look it up you will find it became effective April even though they didn't finish negotiations until June.

Q. Well, anyway it is dated June the 20th, 1946, that is the one to which you refer?

A. That's right.

Mr. McCune: Counsel, I will not object on your assurance that this is an exact copy of the executed contract.

Mr. Bassett: I will have somebody else testify to that. I won't offer it at this time, I'll just withhold it.

By Mr. Bassett:

Q. After that contract became effective you conformed [fol. 26] to the terms of it and began closing your place on Saturdays, is that right?

A. That is right.

Q. And then later on that year, as I understood you, a good many of the dealers felt like they wanted to open on Saturdays and wanted to do something about modifying the contract?

A. That is right.

Q. And as a result a good many of you who were not members of the Association joined it for that purpose?

A. This contract you are referring to was joined after I became a member of the Association.

Q. Now, you just told me that it was being negotiated at the time you joined.

A. That is right.

Q. And it was signed after you joined?

A. Yes.

Q. Yes. Later on in the fall I understood you to say—

A. In the fall of '46 you are referring to?

Q. Yes. No, I'm mistaken about that. You have already said you became a member of the Association in April, is that right?

A. That's right, approximately April.

Q. 1946?

A. It was the spring of the year. I don't know if it was April or May.

Q. Yes. At that time they were negotiating this contract there was a great deal of talk about closing Saturdays?

A. That's right.

Q. And a lot of you joined for the purpose of avoiding closing Saturdays?

[fol. 27] A. That's right.

Q. At any rate, after this contract was signed, Mr. Cline, you began to conform with it and closed your place of business on Saturdays?

A. That's right.

Q. And you continued to conform to that contract until August, 1947?

A. That's right.

Q. Now, in the spring of this year the Association gave notice, did it not, that it desired to renegotiate this contract or reopen it?

A. I believe they did. I've been informed such.

Q. Yes, and did you attend meetings of the Dealers Association where that matter was being discussed?

A. That's right.

Q. How many times?

A. The meetings I attended were called—open meetings, at the time—

The Court: He asked you how many.

By Mr. Bassett:

Q. How many times?

A. I don't know. I haven't got the calendar before me.

Q. You were notified by the Association that a meeting was being held, were you not?

A. That's right.

Q. Did you receive a written notice?

A. Sometimes they sent me a postcard. Always they phoned me up and asked me if I would come down and said they would like to have me present if I would come and visit their meeting.

Q. Yes, and isn't it customary to notify all members of [fol. 28] the meetings?

A. I don't know if it is customary. I imagine they do. Most associations do.

Q. Well, you were a member since 1946, you must have had some meetings between 1946 and the spring of '48. Did you attend the meetings?

A. I attended no meetings after the spring of '46 and I have no recollection of receiving notices.

Q. But you paid dues in '46 which carried you over until the spring of '47?

A. Yes.

Q. Until April, '47?

A. Uh-huh.

Q. And you attended no meetings from '46 until the spring of '48?

A. That is right.

Q. And how many meetings did you attend in the spring of '48 when the new contract was being discussed?

A. Oh, I would say approximately four.

Q. Did you participate in the discussion of the contract, the terms of the contract?

A. No, I did not.

Q. Did you make any remarks concerning Saturday opening or closing?

A. Yes, I did.

Q. At how many of those meetings?

A. Probably two of them.

Q. That was the chief matter of discussion, was it not, in connection with the modification of the contract?

A. Yes.

[fol. 29] Q. And as a result was a new contract negotiated and signed, do you know, Mr. Cline?

A. I've been informed that it was.

Q. Do you know the terms of it, as to concerning Saturday closing?

A. Yes.

Q. It was modified, was it not?

A. It was changed.

Q. In what respect?

A. To allowing the dealers to be open until one o'clock Saturday.

Q. You are opening all day on Saturdays now, are you?

A. Yes.

Q. And have ever since the new contract was signed?

A. Yes.

Q. And you have opened all day on Saturdays ever since August, 1947?

A. Yes.

Q. Did you ever tell Mr. Reinertsen that you weren't bound by any contracts any more because of the Taft-Hartley law, that you could open Saturdays and run your business to suit yourself?

A. I told him I believed that was the case.

Q. You did mention the Taft-Hartley law to him, didn't you?

A. Yes.

Q. When was the last time you talked with a representative of the Union about straightening out your relations with the Union and the Association?

A. Approximately a month ago.

[fol. 35] A. I believe they were. I come so late, thought, that I didn't get much chance to know anything that was going on.

Q. Now, you testified, I believe, that you told them that you were not a member of the Association. At which of these meetings did you make that statement?

A. I believe it was the meeting which was held in the Eagles clubroom or the Eagles Hall in Ballard.

Q. Now, that was the last meeting you attended?

A. The second last one, I'd say, the third last one. That was the one prior to the time when they had the opinion of the legal talent on the contract.

Q. Did anyone dissent from your statement that you were not a member of the Association?

A. No one did.

Q. Were the officers of the Association present?

A. Part of the officers were present.

Q. Has the Association ever notified you in any way that it considers you to be a member?

A. No, it has not.

Mr. McCune: That is all, Counsel.

Recross examination.

By Mr. Bassett:

Q. Has the Association ever notified you that you were suspended or expelled from the Association?

A. I phoned the Secretary and asked him—

Q. No, now please answer my question. Have you received notice in writing, official notice, that you are no longer a member, that you have been dropped for non-payment of dues?

[fol. 36] A. No notice in writing.

Q. Have you had any notice to pay dues in any form?

A. No.

Q. When you joined Local 882, the Union, were you initiated?

A. I believe I was.

Q. You took an obligation at that time, did you not?

A. I took whatever is the order of the day there.

Q. Yes. Were you given a copy of the constitution and by-laws of the Local?

A. I was given some little pamphlets.

Mr. Bassett: Mark that, please.

(Pamphlet containing constitution and by-laws of Automobile Drivers and Demonstrators Local Union No. 882 was marked Defendants' Exhibit No. 2 for identification.)

By Mr. Bassett:

Q. Does Defendants' Exhibit 2 for identification look like the pamphlet containing the constitution and by-laws of the Union?

A. I do not recall. It is so long ago that I don't remember what it looked like.

Q. Well, was it something like that?

A. I do not recall.

Q. But you were given a pamphlet containing—

A. I was given something. I do not remember what it was.

Q. The constitution and by-laws?

A. I didn't even read it.

Q. You didn't even read it?

A. No. I tossed it in the ashcan.

Q. You say you did toss it in the ashcan?

A. That's right.

[fol. 37] Q. Immediately?

A. Oh, I think I had it in my desk for several months intending to read it and finally I threw it out.

Q. I see. Do you have any idea, Mr. Cline, how many automobile dealers, used car dealers, are members of this Independent Dealers Association?

A. Oh, I would say roughly that there are between thirty and forty at present are members.

Q. Thirty and forty?

A. I would estimate that. I've never counted them.

Q. Have there ever been any more than that?

A. I do not think there have ever been more than that. There may have been.

Q. Well, does this Association take in dealers who are engaged in selling new cars?

A. No, it doesn't.

Q. It is only used car dealers, is it?

A. That is my understanding.

Q. And you don't recall that there were ever more than thirty members?

A. I don't recall it.

Mr. Bassett: I think that is all.

Redirect examination.

By Mr. McCune:

Q. Mr. Cline, did you attend a meeting of dealers at the Benjamin Franklin Hotel?

A. Yes.

Mr. Bassett: He said he did.

By Mr. McCune:

Q. At that time—

[fol. 38] The Court: At what time? He hasn't testified when it was held.

By Mr. McCune:

Q. Did you attend a meeting at the Benjamin Franklin Hotel? You said you did.

A. Yes.

Q. What date was that held, approximately?

A. Oh, I haven't got the date with me now. It was approximately two months ago.

Q. It was approximately two months ago?

A. Yes.

Q. Were any dues collected at that meeting that you recall?

A. Some of the members were paying their dues and initiation fees.

Q. Did you pay any dues at that time?

A. No.

Mr. McCune: That is all.

Mr. Bassett: That is all.

(Witness excused.)

The Court: I think we will take our usual recess at this time of ten minutes.

(Short recess.)

Mr. McCune: If the Court please, it has been called to our attention that the plaintiff was not sworn, and I think we can——

The Court: I thought he was sworn.

Mr. Bassett: No, I think something intervened, Your Honor.

Mr. McCune: The reporter says he was not.

Mr. Bassett: Somebody spoke, and then he wasn't sworn. [fol. 39] I think we can swear him now to the effect that all the testimony he gave was the truth, the whole truth and nothing but the truth.

The Court: Come forward.

(Mr. Cline approached the Bench.)

The Court: You do solemnly swear that the testimony you have given has been the truth, the whole truth and nothing but the truth, so help you God?

Mr. Cline: I do.

Mr. McCune: That is all, Mr. Cline.

The Court: It was my mistake, gentlemen. I overlooked it.

Mr. McCune: Mr. Miller, please.

JOHN J. MILLER, called as a witness in behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McCune:

Q. Would you state your name?

A. J. J. Miller, John J. Miller.

Q. In what business are you engaged, Mr. Miller?

A. I am in the used car business in Seattle.

Q. And where is your business located?

A. I am at 2300 6th Avenue.

Q. Are you a member of the defendant Union?

A. I wouldn't say I was. I have a withdrawal card which I obtained on the—I think the 1st of March.

Q. Are you a member of the Automobile Dealers Association?

Cross-examination.

By Mr. Bassett:

Q. You say you have been a member of Local 882?

A. That's right.

Q. And when did you become a member, Mr. Miller?

A. I think in November.

Q. At that time——

A. I can tell you the circumstances if you want me to.

Q. November of what year?

A. 1947.

Q. At that time you did not employ any salesmen?

A. No. I was in a partnership with a man by the name of H. W. Shoddy.

Q. One of you joined and one did not?

A. No, sir.

Q. Both of you joined?

A. We were told that——

Q. Never mind——

Mr. McCune: Let him answer, Counsel.

By Mr. Bassett:

[fol. 43] Q. I asked you if you joined or not. Did you or didn't you?

A. Yes, after I had pickets I joined.

Q. Yes. You say you were picketed?

A. That is right.

Q. All right. That was what year?

A. 1947.

Q. 1947. What month?

A. I think in October I had the pickets.

Q. October?

A. Yes.

Q. And you joined the Union?

A. That's right.

Q. And you remained a member of the Union for how long?

A. I remained a member of the Union until the 1st of March. I asked for a withdrawal card and I obtained one. I was——

Q. On what ground, for what reason?

A. I sold out to my partner.

Q. You sold out and you are not in business now?"

A. Oh, yes, I reopened.

Q. You sold out to your partner?

A. That's right.

Q. And when did you reopen?

A. On the 23rd of April.

Q. Do you employ anybody now as a salesman?

A. That's right.

Q. You do have a salesman?

A. Oh, yes.

Q. When you have a salesman who is a member of the Union, the Union does not ask you to be an active member, does it?

A. I either have to be a member of the Union or hire a [fol. 44] salesman.

Q. Well,——

A. Now, I would like to finish, as long as you have asked me.

Mr. McCune: Let him answer, Counsel.

By Mr. Bassett:

Q. I have simply asked you if the Union requires you to be a member of the Union where you do have an employee.

A. I either have to hire a salesman or belong to the Union myself.

Q. That is right. That is all I am interested in, Mr. Miller.

A. That's it.

Q. Now, when was it you say you joined——

A. However, my salesman is not a Union member. I am no longer affiliated with the Union or the Association.

Q. You're not?

A. I withdrew before the contract was signed.

Q. You say your salesman is no longer a member?

A. That's right. He never has been.

Q. How many salesmen do you have?

A. I have one.

Q. When did you join the Association?

A. I joined the Association at one of the meetings at the Benjamin Franklin Hotel, I think it was.

Q. What month?

A. Well, as I said, those meetings took place between the middle of February until the 7th or 8th of April, and it was possibly I'd say in the latter part of March, I mean the latter part of February when I joined the Association.

Q. February, '48?

A. That's correct.

[fol. 45] Q. And when did you resign?

A. The Association?

Q. Yes.

A. The day that the Union signed the new contract with the Association, I think it was on April 14th. I have a copy of my resignation.

Q. After the contract was signed?

A. Prior to the contract being signed.

Q. April 18th?

A. April 14th.

Q. 14th?

A. Yes.

Q. You resigned?

A. Yes.

Q. How does your operation compare in size with Mr. Cline's? Is your business larger or smaller?

A. I have never paid a great deal of attention to Mr. Cline's business. I'd say mine—I have from twelve to twenty cars on my lot.

Q. Twelve to twenty?

A. Yes.

Q. Are you opening your business on Saturday afternoons now?

A. Do I have to answer that question?

The Court: Yes, I think you may answer the question.

A. No, I've been open until 1:00. I've been conforming to the—

By Mr. Bassett:

Q. Contract?

A. No, I wouldn't say contract. I don't consider myself bound to the contract, but in fairness to my fellow [fol. 46] dealers, I'm in a down town locality and I have been closing at 1:00.

Q. I see. You are doing that in fairness to other dealers because they are bound by a contract and you think it would be unfair for you to open when they are required by the contract to be closed?

A. Yes. That will go on my part just so long as the Union tells me that I must do so.

Q. Do you consider yourself a member of the Union because you have a withdrawal card?

A. I do not.

Q. Have you ever resigned from the Union?

A. There's no such thing, as I've been informed.

Q. Well, you can tell them you don't want to be a member any longer, can't you?

A. I don't know of anybody that ever got away with it.

Q. You never told them that?

A. I certainly have.

Q. You say you have told them you don't want to be a member?

A. Oh, yes.

Q. When did you do that?

A. That I don't recall. Sometime in the last sixty days, I believe.

Q. Before this new contract went into effect did you close your shop on Saturdays?

A. Well, during the negotiations, as I told you, from the middle of February until the 14th of April when the contract was signed, I was out of business. I sold out on February 2nd.

Q. Well, I mean before that, Mr. Miller.

[fol. 47] A. Before that? Prior to having pickets I conformed also to the wishes of the Union on Saturday.

Mr. Bassett: I think that is all, Mr. Miller.

Mr. McCune: I think that is all, Mr. Miller.

(Witness excused.)

Mr. McCune: We will call Mr. Reinertsen as an adverse witness, Your Honor, the defendant.

Mr. Bassett: Mr. Reinertsen.

RALPH REINERTSEN, one of the Defendants, called as an adverse witness by the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. McCune:

Q. Would you please state your name?

A. Ralph Reinertsen.

Q. And you are one of the defendants in this case?

A. I am.

Q. By whom are you employed, Mr. Reinertsen?

A. Local 882, Automobile Drivers and Demonstrators.

Q. In what capacity?

A. Business representative.

Q. Your Union is picketing the place of business of the plaintiff in this case?

A. Yes.

Q. What use do you make of the license numbers which are taken down by your pickets of cars which stop at Mr. Cline's place of business?

A. Well, we make very little use of the license numbers. It is simply a method of keeping the fellows on their [fol. 48] toes, we know they're on the job, and we do take the numbers, we check them, and if we find they're a member of any union in the city we will call them if we can and call their attention to the picket line.

Q. But now, how many of those have you called?

Mr. Bassett: Since when? Wait a minute, now.

Mr. McCune: Oh, since the strike started. Since the picket line started.

Mr. Bassett: At Mr. Cline's place?

Mr. McCune: That is right.

A. We have probably—oh, I don't think we've called over four or five of our members.

By Mr. McCune:

Q. So that by and large you just take down these license numbers and make no further use of them, is that right?

A. We make no further use of them. The pickets turn them in, and if we find any of them are members of a union—

Q. Well, do you check all the license numbers?

Mr. Bassett: He said he did.

A. Yes.

By Mr. McCune:

Q. Do you check every license number?

A. Yes.

Q. Then you file them away?

A. In the waste basket.

Mr. McCune: That is all.

Cross-examination:

By Mr. Bassett:

Q. Have you ever made any effort to get in touch with people who are not members of the Union?

[fol. 49] A. No, sir.

Q. You just check those to see if any of them are members of a union?

A. That's right.

A. Affiliated with the American Federation of Labor or the Teamsters?

A. I wouldn't even say that far, Mr. Bassett. We just go to the Teamsters.

Q. You just check to find out whether they are a member of any Teamsters Union?

A. That is right.

Q. And about how many Teamsters Local Unions are there in Seattle, Mr. Reinertsen?

A. I think there are fifteen or sixteen.

Q. Have you any idea how many members there are all told in the Teamsters Union here in Seattle?

A. About—I'll just have to guess at it—seventeen to eighteen thousand, I believe.

Q. Well, then you check to see if any of those license numbers belong to a member of the Teamsters Union?

A. Yes, sir.

Q. If he does, you refer that back to the Local?

A. That's right.

Q. And find out whether he passed the picket line, is that it?

A. That's it.

Q. Have you found, in connection with the picketing at Mr. Cline's place, any members of the Teamsters Union have passed the picket line?

A. Yes, we have.

[fol. 50] Q. What did you do about it?

A. They were immediately cited before their executive boards and reprimanded. I don't know what the penalty was, but probably a talking to and that's all.

Q. How long have you been a business representative of the defendant Union Local 882?

A. About two and a half years.

Q. Were you engaged in the automobile business before that, Mr. Reinertsen?

A. Yes, sir.

Q. In what capacity?

A. Well, at the last I was selling. I've been an owner and a salesman, both.

Q. For how many years had you been engaged in the automobile business before you became a business representative of the Union, just approximately?

A. Thirty years.

Q. Here in Seattle?

A. Spokane, Everett and Seattle.

Q. How many years in Seattle?

A. Ten years.

Q. I wish you would explain to the Court why the Union is desirous of inducing persons in the automobile business to join the Union where they do not employ any Union member. What is the purpose of that? Why do you ask them to become a member of the Union?

Mr. McCune: We object, Your Honor, as improper cross examination and beyond the scope of the direct.

Mr. Bassett: No, I am putting him on as my own witness now.

[fol. 51] Mr. McCune: Oh, are you starting your case?

Mr. Bassett: Yes, while he is on the witness stand.

The Court: You may answer.

Mr. McCune: All right.

RALPH REINERTSEN, one of the Defendants, called as a witness in his own behalf, being previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Bassett:

(The reporter read the last question.)

A. We have contracts with the dealers, both new and used cars, in the City of Seattle, and also the King County Dealers Association, that is in the outlying district of King County. The contract provides certain rules, working rules, compensation, in the way of commissions. A used car dealer will pay seven per cent to a salesman on the selling price of the car, provided there is no trade-in. If there is a trade-in he pays only the difference.

Now, a used car dealer operating his own lot can sell a car for seven per cent less than the other fellow can, and it makes him an unfair competitor. Now, we feel that he should at least live up to the rules of the organization and abide by the contract, and the contract provides specifically that he must pay a commission to a salesman. The wording of that I think would certainly mean that he is required to hire a salesman. Now, may I go a little farther?

By Mr. Bassett:

Q. Yes.

[fol. 52] A. During the war most all of the salesmen were put out of business. They were laid off. A lot of them started out and did a little curbstone selling. That is, they would sell from their home or maybe open a lot. They couldn't afford to hire a salesman, they were just on their own. Maybe they would sell a car or two a week or a month, maybe. So in order to keep everything in line we then took in the owner-operator as a salesman, and that is how it came about that we took in the owners themselves.

Q. The real purpose of taking them in is to have them conform to the contract that you have with dealers who do employ people?

A. That is right.

Q. So there won't be any unfair competition between them?

A. That's it.

Q. A dealer who employs a salesman has to pay him how much commission on a thousand dollar car?

A. \$70.00.

Q. \$70.00. If he sold the car himself he could sell it for \$70.00 less, couldn't he?

A. That's right.

Q. And that would be unfair competition?

A. Yes, sir.

Q. Now, when you take in these owner-operators such as Mr. Cline as members of the Union, are they initiated?

A. Yes, sir.

Q. Was Mr. Cline initiated?

A. Yes, sir.

Q. Do they take an obligation?

[fol. 53] A. Yes, sir.

Q. And what is the substance of the obligation?

A. They swear to abide by the constitution, and by-laws, and such contracts as—we don't use those words, but such contracts as are in force, is the meaning of it.

Q. I will ask you to look at Defendants' Exhibit 2 for identification and tell me what that is.

A. That is our constitution and by-laws of the Automobile Drivers and Demonstrators Local 882.

Q. When Mr. Cline was initiated and obligated was he given a copy of that?

A. Yes, sir.

Q. Was he also given a copy of the International Union's constitution, the Teamsters International Union?

A. Undoubtedly he was, although there was a while we didn't have them. We could have missed out on that one.

Q. Yes. Well, I am interested in Exhibit 2, Defendants' Exhibit 2. Was he given a copy of that?

A. He was given that.

Q. And that has been in force during all the time that he was a member of the Union?

A. Yes, sir.

Q. I notice this is revised as of October 5th, 1945, it says on here.

A. Yes, sir.

Mr. Bassett: We offer this Defendants' Exhibit 2 in evidence.

Mr. McCune: Is it an exact copy?

By Mr. Bassett:

Q. Is it an exact copy?

A. That is an exact copy.

[fol. 54] The Court: Your Union is a Local of the Teamsters Union, is it?

A. Yes, sir.

Mr. McCune: We will not object. I wonder if you could furnish me with a copy. Could you, Counsel?

By Mr. Bassett:

Q. Have you got another copy of this?

A. I don't have one with me.

Mr. Bassett: We can get you one, I think.

Mr. McCune: All right.

Mr. Bassett: This says on the face of it, in answer to your question, "Constitution and By-Laws of Automobile Drivers and Demonstrators Local Union No. 882, affiliated with American Federation of Labor and chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America. Adopted at Seattle, Washington, March 30, 1937. Revised October 5, 1945." I offered it. Has it been admitted?

The Court: It may be admitted.

(Defendants' Exhibit No. 2 for identification was admitted in evidence.)

Mr. Bassett: I would like to call the Court's attention to one or two provisions of this constitution.

Article VII provides, in Section 3,

"No member of the local shall work for less than the minimum rate of wages recognized by this local. Any member working for less than the scale shall be fined, expelled or both."

Section 4,

"Any member of this local violating any of the other [fol. 55] provisions of any contract between this local and our employers shall be expelled from membership in the Union."

Section 8,

"No member of this local shall try to disrupt the Union or injure it in any shape, manner or form, or persuade members to drop out under penalty of not less than fifty (\$50.00) dollars fine."

Section 10,

"It shall be the duty of all members of this Union to report immediately to the Union, any violations by the employer of the Union wage scale or working agreement. Any member convicted of failure so to do shall be fined, suspended or expelled at the discretion of the Union."

Section 11,

"It shall be the duty of all members of this Union to report immediately to the Union any brother violating any sections of this Constitution, any rule of the Union, or any contract or working agreement between this Union and employers. Any member convicted of failure so to do shall be fined, suspended or expelled at the discretion of the Union."

By Mr. Bassett:

Q. Mr. Reinertsen, showing you Defendants' Exhibit 1 for identification, I will ask you to state what that is.

A. That is a copy of our three contracts, one with the Seattle Automobile Dealers Association, with the King [fol. 56] County Dealers Association and with the Independent Used Car Dealers Association.

Q. Is this a true copy of the agreement?

A. That is a true copy of the agreement, with the exception of the other copy which follows—

Q. I am speaking of the one that was in full force and effect commencing June 20th, 1946, and up until the new one was negotiated in April of this year.

A. Yes, sir.

Q. Now, this is signed by the Independent Automobile Dealers Association and by the Union?

A. Yes, sir.

Q. I don't see here, you said something about new car dealers.

A. The first part of it.

Q. Oh, I see. That is——

A. That is the King County.

Q. Oh, I see. The Independent contract starts at Page 16, the Independent Dealers?

A. That is right.

Q. I see. They are all under one cover here?

A. They are all under one cover.

Q. Yes, but the one we are interested in commences at Page 16 and carries to the end, Page 24?

A. Yes, sir.

Q. And that is a true copy of the contract that was in existence during that period?

A. Yes, sir.

Q. That is June 20, 1926, to what date did you say?

A. To April 14th, 19——

[fol. 57] Q. '48?

A. '48.

Mr. Bassett: We offer this in evidence.

Mr. McCune: I wonder, Counsel, if we could cut out those other contracts. They are apparently on other pages, are they, so there will be no confusion.

Mr. Bassett: I think we could do that. Can we just put a piece of paper around this and clip it.

The Clerk: Could we staple it?

Mr. McCune: If you could staple it, that would be all right.

Mr. Bassett: All right.

(Defendants' Exhibit No. 1 for identification was stapled as indicated.)

Mr. Bassett: Now,——

Mr. McCune: That is satisfactory, Counsel. We have no objection to it.

Mr. Bassett: We offer it in evidence, Your Honor.

The Court: It may be admitted.

(Defendants' Exhibit No. 1 for identification was admitted in evidence.)

Mr. Bassett: I would like to read the clause in this contract, Your Honor, relating to closing of used car businesses.

Section 1,

"That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: "—

[fol. 58] The holidays are then enumerated, and after enumerating the holidays it says,

"Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

The contract in Section 4 provides for the minimum commission that is paid salesmen, seven per cent specified.

Mark this, please.

The Clerk: Defendants' Exhibit 3 for identification.

(Copy of Agreement was marked Defendants' Exhibit No. 3 for identification.)

By Mr. Bassett:

Q. Mr. Reinertsen, handing you Defendants' Exhibit 3 for identification, I will ask you to state what that paper is that is labeled an agreement. What is that used for?

A. In the case where a dealer is not a member of the Association, rather than—

Q. When he is not a member of the Association?

A. Where he is not a member of the Association.

Q. Yes.

A. We simply hand him a copy of the contract, which is [fol. 59] the little salmon-colored book.

Q. Like Defendants' Exhibit 2?

A. Yes, and this agreement reads, "I (or we) hereby agree to abide by a certain contract existing between Independent Automobile Dealers Association and the Automobile Drivers and Demonstrators Union, Local 882,

dated" whatever date it is, "and effective" whatever date we use, "a copy of which is in my (or our) possession."

Q. Now let me understand you. You ask those dealers to sign this who do not have in their employment salesmen?

A. No, not necessarily. They may have a salesman, but we expect a contract with every dealer.

Q. Oh, I see. If a dealer is not a member of the Association—

A. If a dealer is not a member of the Association.

Q. Then you go to him and ask him to sign this?

A. That's right. That is in lieu of the—

Mr. Bassett: I'd like to introduce this in evidence.

Mr. McCune: We object until we know the purpose.

Mr. Bassett: For the purpose of illustration, is all. It is just a blank form.

Mr. McCune: I'd like to interrogate the witness concerning it, if you don't mind, Counsel.

Mr. Bassett: Go ahead.

Mr. McCune: Mr. Reinertsen, do you have these signed agreements with all dealers who are not members of the Association?

A. We have had them all, with the exception of two or [fol. 60] three who have sprung up in the last little while, one of them who was a witness here just ahead of me.

Mr. McCune: You have this signed with all dealers in the City of Seattle, then?

A. Who are not members of the Dealers Association.

Mr. McCune: Who are not members of the Dealers Association?

A. Yes, sir.

Mr. McCune: Or whom you do not consider to be members of the Dealers Association?

A. Yes, sir.

Mr. McCune: I think that is all, Counsel. We object to its introduction, Your Honor, on the ground that it is a self-serving document and that they apparently seek to prove that this man is a member of the Association because they did not ask him to sign one of these which has nothing

to do with whether or not he is a member of the Association.

The Court: Objection overruled. It may be admitted.

(Defendants' Exhibit No. 3 for identification was admitted in evidence.)

By Mr. Bassett:

Q. Did you ask Mr. Cline to sign this form, Defendants' Exhibit 3?

A. No, sir.

Q. Did he ever tell you that he was not a member of the Dealers Association?

A. I believe he did.

Q. Since this picketing?

[fol. 61] A. I believe he did.

Q. When?

A. As he says, about a month ago, about the time we signed the other contract I believe he did tell me.

Q. Told you the first time. Was that the first time he ever told you that?

A. That's right.

Q. Have you seen him concerning the dispute that exists out there recently?

A. About a month ago he called. He called Mr. Rohan, and I went out there to see him.

Q. What occurred at your meeting at that time?

A. Well, I would have to refer to the call. He called and said, "I understand you have a new contract and I'd like to see it."

Q. Referring to the contract of April—

A. Of April 14th. "I'd like to see it, Maybe we can get together on it." So I went out. I went out in the morning, I think it was in the morning, and sat down and talked with him a while, and I said, "You wanted to see this contract," and he said, "Yes, I would like to," so I showed it to him.

(Agreement between Independent Automobile Dealers' Association, Inc., and Automobile Driver and Demonstrators Local No. 882, was marked Defendants' Exhibit No. 4 for identification.)

By Mr. Bassett:

Q. Now just at that point I will ask you, Defendants' Exhibit 4 for identification is a copy of that contract, a mimeographed copy?

A. This is a mimeographed copy.

[fol. 62] Q. Between the Union and the Independent Automobile Dealers Association?

A. Yes, sir.

Q. Signed what date?

A. April 14th, 1948.

Q. Is that a true and correct copy?

A. That is a true and correct copy.

Q. Was it mimeographed by the Union and distributed to all dealers of the Association?

A. Yes, sir.

Mr. Bassett: We offer this in evidence.

Mr. McCune: No objection, Counsel.

The Court: It is admitted.

(Defendants' Exhibit No. 4 for identification was admitted in evidence.)

By Mr. Bassett:

Q. Now, you say you showed him a copy of Defendants' Exhibit 4 at that time?

A. Yes.

Q. What did you say to him?

A. He read it over. I think he read every word of it, at least he took plenty of time for it, and he said, "All right, what will I have to do now?" I said, "We ask that you sign the contract and live up to the provisions of the contract." "Well," he said, "what does that mean?" I said, "It means closing at one o'clock on Saturdays now, and of course putting on a salesman." "Well," he said, "I'm not going to put on a salesman." "Well," I said, "you wouldn't be complying with the contract unless you did." So he said, "Well, let me take this and show it to my attorney," and I said, "No, I don't think that [fol. 63] is necessary, Cline. You can probably find one somewhere else, but I'm not going to leave you the contract unless you sign one," and that was about all that was said.

Q. Did he say anything about wanting to be reinstated as a member of the Union?

A. He said, "I can't hire a salesman." I think he said, "What about myself," and I said, "No, that wouldn't do, you know that," and I don't believe it went any further so far as that goes.

Q. Under the Union rules and principles of organized labor is a man who works behind a picket line ever eligible for membership?

A. Never.

Q. Are you familiar with Mr. Cline's operation, I mean the size of the business and the number of cars he has there?

A. Yes, I have watched it pretty closely.

Q. Are there any dealers who are members of the Association who have an operation that isn't any larger than his or perhaps smaller than his who do employ salesmen?

A. Oh, yes, several of them. In fact, Cline I think is considered one of the bigger dealers.

The Court: He's what?

A. I think Cline has been considered one of the bigger dealers.

By Mr. Bassett:

Q. About how many dealers were members of the Association as of April of 1948 when the new agreement was signed?

A. I couldn't answer that, Mr. Bassett. I don't know.

Q. Have you some idea?

A. It seems to me it was around forty or forty-five. I [fol. 64] wouldn't say.

Mr. Bassett: I think you may cross-examine.

Cross-examination.

By Mr. McCune:

Q. Mr. Reinertsen, as I understand your testimony you stated that there were—

The Court: Is your name Reinertsen or Anderson?

A. Reinertsen.

The Court: Reinertsen?

A. Yes, sir.

By Mr. McCune:

Q. You stated that there were quite a few dealers who were known as what are termed curbstome dealers who are unable to employ salesmen?

A. Yes.

Q. And in fairness to them you let them join the Union, is that right?

A. Yes.

Q. You thought that was the fair thing to do?

A. That's right.

Q. And if they didn't join you picketed them is that right? Is it or isn't it?

A. I don't believe we ever had any occasion to picket anyone.

Q. Did you ever picket Mr. Miller?

A. Yes.

Q. And he later joined the Union, didn't he?

A. Yes, sir.

Q. And didn't you threaten to picket Mr. Cline unless he joined the Union?

[fol. 65] A. No, I don't think there were any threats, because Cline brought it on himself. I didn't threaten him at all.

The Court: What do you mean by a curbstome dealer?

A. Well, Judge, they are referred to—

The Court: A fellow who has his place of business under his hat?

A. That's it. He just sells on the curb. He puts a for sale sign on his car.

By Mr. McCune:

Q. You mean that Cline came in voluntarily and said, "Now, boys, I want to join the Union"?

A. I don't know. I had nothing to do with his joining the Union.

Q. That was Mr. Rohan, wasn't it, so you wouldn't know whether or not Mr. Rohan told him he would picket him, do you?

A. No, I wouldn't know.

The Court: I think we will take a recess at this time until 1:30.

(Thereupon, at 11:56 o'clock A. M., a recess herein was taken until 1:30 o'clock P. M.)

[fol. 66]

Wednesday, May 19, 1948.

1:30 o'clock P. M.

(All parties present as before.)

Mr. Bassett: I think you were cross-examining.

Mr. McCune: I believe I was, Counsel.

RALPH REINERTSON (resumed the stand)

Cross-examination (Continued).

By Mr. McCune:

Q. I believe, Mr. Reinertsen, you testified that anyone who had worked behind a picket line was forever barred from again belonging to a union, is that right?

A. That is my understanding. I haven't any authority to—

Q. So that—well, that is the way it seems to operate?

A. That is the belief, yes.

Q. You have been a union representative for some years, haven't you?

A. Two and a half years.

Q. And that is the general understanding?

A. Yes, that is the general understanding.

Q: Well, now, Mr. Reinertsen, it is your position then that Mr. Cline, in order to stop this picketing, must close

Saturdays at one o'clock? That is correct, that is one contention, isn't it?

A. Yes, sir.

Q. That he must hire a Union salesman, that is another one, isn't it?

A. That is right.

Q. And that if he sells cars himself under the contract he [fol. 67] must pay the commission to that salesman of seven per cent, is that right?

A. Yes, sir.

Q. Now, you have other dealers, do you not, who belong to the Union and employ no salesmen? I believe you testified to that effect.

A. Yes, we do.

Q. And they don't have to pay this commission to anyone, do they? They retain it themselves?

A. That's right.

Q. So that by virtue of not being a member of the Union he would be deprived of the privilege of operating his business and keeping the seven per cent for himself?

A. Uh-huh.

Q. That is correct, is it not?

A. That is correct.

Q. And I believe you stated that when you called his place of business he asked for a copy of the contract and you refused to give it to him, you said that you weren't going to give it to him unless he signed the contract, is that correct?

A. That was not by telephone, that was when I was out there.

Q. When you were out there, I mean you told him you wouldn't give him a copy unless he signed the contract?

A. That's right.

Q. Mr. Cline then is not now a member of your Union, is he?

A. No; sir.

Q. And he has not been since when?

A. October, I think, we dropped him sometime in October.

Q. October of 1947, is that right?

[fol. 68] A. 1947.

Mr. McCune: That is all.

Redirect examination.

By Mr. Bassett:

Q. The dealers who do not employ salesmen are members of the Union, are they not?

A. Yes, sir.

Q. And they conform to the contract that the Union has with all other dealers who do employ members of the Union?

A. Yes.

Mr. McCune: With the exception that they retain the seven per cent themselves.

Mr. Bassett: If they don't employ anybody, certainly they retain it.

Mr. McCune: It is your position, then, that this man should no longer retain the seven per cent for himself but should pay it to someone else, is that right?

A. That is right.

By Mr. Bassett:

Q. Mr. Reinertsen, if Mr. Cline should employ a salesman, that would not prevent him from selling, would it? He could still sell?

A. He could still sell, but the commission would have to be paid on everything he sold as well as what the man sold himself.

Q. I see. That is the contract that you have with all the other dealers?

A. That is the contract, yes.

Mr. Bassett: That is all.

Mr. McCune: That is all, Mr. Reinertsen.

(Witness excused.)

[fol. 69] Mr. McCune: I would like to recall Mr. Cline for a moment, Your Honor.

GEORGE CLINE, the Plaintiff, recalled as a witness in his own behalf, being previously duly sworn, was examined and testified further in rebuttal as follows:

Direct examination.

By Mr. McCune:

Q. Mr. Cline, have you ever had occasion to compute the percentage of your gross sales which represented profits from your business after payment of all costs other than any remuneration for yourself?

A. The company that keeps my books informs me that the—

Mr. Bassett: Just a minute. I object to that. I think that is hearsay, and the audits would be the best evidence.

The Court: Well, his answer is not responsive to the question.

By Mr. McCune:

Q. Have you ever had occasion to compute the percentage of your gross sales which represents the net profit that you receive after payment of all costs other than remuneration to yourself?

A. Yes.

Q. And what is that percentage?

A. It runs from eight and one-third down to months when I lose money.

Q. And if you had a salesman to whom you paid seven per cent of the gross sales, where would that seven per cent come out of?

A. It would have to come out of the eight and one-third [fol. 70] or less, and the months when I'm running in the red I would have to acquire money from some place or other to pay this seven per cent to the salesman.

Q. Mr. Cline, when did you first advise a representative of the Union that you were not a member of the Association?

A. I informed Mr. Rohan the day he brought the pickets to my lot.

Q. When was that?

A. That was the Saturday before Labor Day in 1947.

Q. And what was said?

A. He said he thought I was still a member inasmuch as I had joined in 1946 and he had not been informed that I was no longer a member.

Q. What did you tell him?

A. I told him that I couldn't help what he had not been informed of and that since I was no longer a member of the Association I naturally would not be bound by their contract.

Q. Would you be able to continue in business if you complied with the requirements which the Union—

Mr. Bassett: I object to that as calling for a conclusion of the witness.

The Court: Objection sustained.

Mr. McCune: I think that is all, Your Honor. I have a witness who is to be here at a quarter of 2:00. This is my last witness.

The Court: Do you have any further witnesses, Mr. Bassett?

Mr. Bassett: No, Your Honor.

The Court: Well, we can take a recess until a [fol. 71] quarter of 2:00, if you care to.

Mr. McCune: Yes.

(Witness excused.)

Mr. Bassett: What will he testify to? Maybe we will admit it.

Mr. McCune: He will testify that during the month of March he and Mr. Cline, together with two other dealers, were at a dealers meeting, and he will have with him a list of the members who were at that meeting bearing the signatures on a page, they have written their names down, together with their addresses. The list will show that following the name of George Cline, Mr. Cline having written his name on this list, that he wrote the word "visitor", being part of the Association records.

Mr. Bassett: Is he an officer of the Association?

Mr. McCune: He is the son of the Secretary. The Secretary of the Association is out of town, but the records are in his possession.

Mr. Bassett: Well, we'll wait and see.

Mr. McCune: Very well.

The Court: Well, we will take a recess then until the witness gets here.

Mr. Bassett: I don't think it is material, Your Honor, but I am just curious to see it inasmuch as Counsel made the statement he did.

(Short recess.)

Mr. McCune: I'd like to call Mr. Sims, Your Honor.

[fol. 72] RICHARD SIMS, called as a witness in behalf of the Plaintiff, being first duly sworn, was examined and testified in rebuttal as follows:

Direct examination.

By Mr. McCune:

Q. Would you state your name, please?

A. Richard Sims.

Q. And what business are you in, Mr. Sims?

A. The used car sales business.

Q. And you are associated in that with your father?

A. That is correct.

Q. And is your father an officer of the Independent Automobile Dealers Association?

A. He was recently elected Secretary of the Association.

Q. And where is your father now?

A. He is in California.

Q. And the records of the Association are kept where?

A. In our office.

Q. I served you with a subpoena and asked you to bring down here a particular document. Do you have it with you?

A. Yes.

Mr. McCune: If the Court please, attached to the instrument that I am interested in is some correspondence with the Association, notices of one kind and another. Now, I can put that in. I hardly think that it is fair to do so, however. It relates to correspondence between the Association and their attorneys. It just all happens to have been clipped together.

Mr. Bassett: Well, let's see the paper that you are interested in.

[fol. 73] (Mr. Bassett examined papers referred to.)

Mr. Bassett: Let's go ahead and detach it.

Mr. McCune: All right. Mark that, please.

The Clerk: Plaintiff's Exhibit No. 5 marked for identification.

(Two papers containing names and addresses were marked Plaintiff's Exhibit No. 5 for identification.)

By Mr. McCune:

Q. I show you what has been marked for identification as Plaintiff's Exhibit 5. It is an instrument containing a number of signatures. I ask if your signature is on this instrument?

A. Yes. This is my signature.

Q. That is your signature, and under what circumstances did you affix your signature to this instrument?

A. We were attending a meeting of the Association at the Benjamin Franklin Hotel March 31st and at the close of the meeting our attorney asked us to pass this around and asked those in attendance to affix their signatures to let them know who was there that evening.

Q. And this is the list that was—

A. That is correct.

Mr. McCune: We offer this in evidence, Counsel.

Mr. Bassett: May I inquire?

Mr. McCune: Yes.

Mr. Bassett: You say the purpose of this was to ascertain who was present there that evening, is that what the attorney said?

A. To the best of my knowledge that is correct. I may add that there might have been some who did not sign it. [fol. 74] Mr. Bassett: There were some there who did not sign at all, is that right?

A. That I can't say for certain, but I feel so.

Mr. Bassett: Did he simply request those present to sign this and give their address opposite their names?

A. That is correct.

Mr. Bassett: I have no objection to this.

The Court: It may be admitted.

(Plaintiff's Exhibit No. 5 for identification was admitted in evidence.)

By Mr. McCune:

Q. Are you a member of the Association, you personally?

A. I am the assistant manager of the Automobile Exchange, my father is the manager, and in his absence I act as a member of the Association.

Q. All right, fine, Mr. Sims, thank you.

Mr. McCune: That is all.

Cross-examination.

By Mr. Bassett:

Q. Are you engaged in selling used cars, Mr. Sims?

A. Yes.

Q. Are you a salesman yourself?

A. Salesman and owner of cars.

Q. Are you in partnership with your father?

A. We have a working arrangement where we have mutual ownership of—

Q. Are you a member of the Salesmen's Union?

[fol. 75] A. No, sir.

Q. You are not. You are a member of the Association?

A. Yes.

Q. Does your firm have a contract with the Union, Local 382, the Salesmen's Union?

A. Yes.

Q. Do you employ salesmen at your place?

A. Yes, we do.

Mr. Bassett: I think that is all.

Redirect examination.

By Mr. McCune:

Q. Then when you sell a car yourself a commission is paid to the salesman, is that right?

A. That is correct.

Mr. McCune: That is all, Mr. Sims.

(Witness excused.)

Mr. McCune: I'd like to recall Mr. Cline, Your Honor.

GEORGE CLINE, the Plaintiff, recalled as a witness in his own behalf, being previously duly sworn, was examined and testified further in rebuttal as follows:

Direct examination.

By Mr. McCune:

Q. I show you what has been marked for identification as Plaintiff's Exhibit 5, Mr. Cline, and I ask if this is your signature?

A. Yes, it is.

Q. And did you attend the meeting concerning which [fol. 76] Mr. Sims has testified?

A. Yes, I did.

Q. And did you write the word "visitor" which appears after your address?

A. Yes, that is in my handwriting.

Q. One further question, Mr. Cline. Has your business fallen off as a result of the picketing?

A. Yes, it has.

Q. To what extent?

A. Well, as near as I can determine the volume has dropped around eight to ten thousand dollars a month in sales.

Q. It is rather difficult to determine that exactly?

A. Well, it is difficult to determine it exactly. You would have to take a recap of the monthly exhibit. I know that I used to have the money to pay about two thousand to twenty-five hundred dollars worth of bills on the 10th of every month, and I very often have no money now to pay any bills.

The Court: Do you keep books?

A. I keep books, but the overhead runs on and if there is no income there is no money to pay it.

Mr. Bassett: I object to that and ask that it be stricken.

The Court: Well, I say you keep books, keep an account of your business?

A. Yes.

The Court: All right.

Mr. McCune: That is all.

[fol. 77] Cross-examination.

By Mr. Bassett:

Q. Why did you write that word "visitor" after your name on this Exhibit 5?

A. They were soliciting new memberships, the Association was soliciting new memberships at the meeting, that was the purpose of the meeting, and I wished to have it very plain at the time that I was attending as a visitor.

Q. And why did you want it to be so plain that you were only there as a visitor?

A. Somebody had suggested to me that if I attended the meetings that I was invited to, that it might be considered that I was a member, and I did not wish to have any misunderstanding in this. In fact, I informed them at that meeting that I could not place myself—

Q. Just a minute. Answer my question. You are the only person that put that word "visitor" after their name on this list, isn't that a fact?

A. That appears to be correct, yes.

Q. Yes, and you heard the lawyer announce that they wanted to get the names of the persons present and their address, didn't you?

A. Yes.

Q. It had nothing to do with membership, did it?

A. It was a membership drive meeting.

Q. You wanted to make it appear then that you were there just as a visitor?

A. That is right.

Q. And you didn't want to be a member?

A. That is right.

[fol. 78] Q. Why don't you want to be a member of this Association? Why did you quit?

A. The Association was bound by a contract which had no termination date and I don't want to be any party to a contract which never terminates.

Q. No, now who told you it had no termination date?

A. The lawyer told us that at that meeting.

Q. It was reopened, wasn't it?

A. It may be reopened but not terminated, he told us.

Q. It can be reopened each year at the will of either party, can't it? It extends for one year and unless notice to reopen is given thirty days in advance it continues for another year, isn't that the way it reads?

A. That was not the opinion of the legal talent at the meeting.

Q. Is that why you didn't want to be a member of the Association?

A. I stated very carefully at the meeting that I could not see my way to joining their Association until they terminated that contract, until it was legally terminated and a new one could be negotiated without any recourse to the old one.

Q. Well, a new one was negotiated, wasn't it?

A. I've been told one was.

Q. Now, when did you say you discontinued being a member of this Association?

A. I ceased attending all meetings—

Q. No, when did you notify the Union? You said you notified the Union in August, 1947, that you were no longer a member of the Association.

[fol. 79]. A. I informed Mr. Rohan personally that I was no longer a member of it.

Q. Yes, and that is the time when you deemed yourself out of the Association?

A. No, I deemed myself out of it way back in the middle of 1946.

Q. And why did you do that?

A. I decided that the membership of the Association was under the control of the labor union and it was just no place for me.

Q. You didn't want to be a member of the Union in August, 1947?

A. No.

Q. You wanted to operate your business to suit yourself, didn't you?

A. That is exactly right.

Q. And you did that when you thought the Taft-Hartley law gave you stimulus and that backbone to do it, isn't that a fact?

A. That and some other things.

Q. Yes. Well, you still want to operate your business as you please, don't you?

A. That is right.

Mr. Bassett: That is all.

Mr. McCune: That is all, Mr. Cline.

(Witness excused.)

Mr. McCune: That is all, Your Honor.

The Court: Do you wish to be heard, gentlemen?

Mr. Bassett: We have no further evidence, Your Honor.

[fol. 80] The Court: I will hear your argument.

(Whereupon, the matter was argued to the Court by respective Counsel.)

The Court: You haven't any other authorities to cite except this?

Mr. McCune: Your Honor, I am satisfied with that memorandum and the Gazzam case and the Hanke case.

The Court: Gentlemen, I will try and pass upon this Friday morning, if I get a chance. I can't work on it this evening. If I can't pass on it Friday morning at 9:30, why I will notify Counsel. It has been going on so long that a few days longer won't hurt anything. At 9:30 Friday morning, if you don't hear from me in the meantime, report back at 9:30. My clerk will make a note of it. I am working on another case, gentlemen, is the reason that I may not be able to do that, and I have to do most all my decision work at night and I can't do it tonight.

(Whereupon, at 3:45 o'clock P. M., Wednesday, May 19, 1948, a recess herein was taken until 9:30 o'clock A. M., Friday, May 29, 1948.)

[fol. 81]

Friday, May 21, 1948.

9:45 o'clock A. M.

(All parties present as before.)

The Court: I will take up this Cline versus the Automobile Drivers case first.

Mr. Bassett: If the Court please, may I make a formal motion at this time. I think we started to argue without making a formal motion.

The Court: All right, proceed.

Mr. Bassett: While Your Honor understands that we are asking that the plaintiff's application for temporary injunction be denied, I don't think we made such a motion. I would like to make a formal motion to that effect at this time and have the record show that we claim the protection of the 1st and 14th Amendments to the Constitution of the United States.

COURT'S ORAL OPINION

The Court: Gentlemen, I had hoped to be able to prepare and file a written opinion in this case of Cline versus the Automobile Drivers and Demonstrators Local Union No. 882, Cause No. 395781 of this court. I have, however, made some notes, and will dictate my decision to the reporter so Counsel may get copies from the court reporter.

This case, which comes up upon an order to show cause why a temporary injunction pendente lite should not be entered in the case, in my opinion involves the same [fol. 82] fundamental facts as are involved in the case of Hanke versus the International Brotherhood of Teamsters, Cause No. 392989 of this court. I see no distinction in the ultimate facts as established by the evidence. While it is contended by Counsel for the defendants herein that a distinction exists between the two cases, by reason of the former membership of the plaintiff in the local defendant Union and a contract that was entered into at a time when he was a member, I think that the correct test to be applied is the relationship between the parties at the time of the dispute between them rather than their relationship prior thereto.

The evidence in the case at bar discloses that the relationship as between the plaintiff and the defendant Union

as a member or as a participant in a contract between the employers' Association had ceased at the time of the dispute here in question. So I don't think that that distinction has anything to do with the ultimate issue to be decided in this case.

I have read the able opinion of Judge McDonald in the case of Hanke versus the International Brotherhood of Teamsters, and I concur in the views expressed in his opinion. I concur in his view that the recent en banc decision of the Supreme Court of this state in the case of Gazzam versus Building Service Employees Union, 129 Washington Decisions 455, is binding upon the Superior Courts of this state and is controlling in this case as well as the Hanke case.

I desire, with due deference, without any intention of [fol. 83] improper or inappropriate criticism of either our national or state Supreme Court or any of the Judges thereof, to respectfully point out what seemed to me to be inconsistencies and lack of uniformity in the decisions of our Supreme Court in disputes involving labor unions and labor disputes. That such inconsistencies existed is admitted in the majority opinion written by Judge Simpson in the Gazzam case. I deem it my duty as a Judge of the Superior Court to make such a statement in this case, in order that discrepancies or inconsistencies in its decisions may be either harmonized or corrected so that the law relative to such disputes may be made a certain and definite guide to trial judges and the bar of the state. That such comment or statement is proper in all cases is established, I believe, by the decisions of our state Supreme Court. See Walker versus Gilman, 25 Wash. 2nd 557. Dissenting opinion re Torenson's Estate, 28 Wash. 2nd blank, 128 Wash. Decisions 659, 691.

It is stated in the majority opinion in the Gazzam case at Page 459,

"Discrepancies creep in our decisions from time to time and it is frequently necessary that a review be had of our opinions, at which time the cases may be analyzed, approved or overruled, to the end that the law may be made certain, so that individuals and organizations and members of the bench and bar may be advised of the holdings of this court. In cases like the one at bar, organized, non-organized labor and em-

ployers are entitled to definite decisions regarding their [fol. 84] rights and liabilities, to the end that they may conduct their affairs as law abiding citizens, without danger to themselves or their property. To that end we shall call attention to our most recent decisions."

First, as noted in the exhaustive majority opinion in the Gazzam case, the decisions in recent years of both the national and state Supreme Courts have been neither uniform nor harmonious nor consistent in cases involving labor disputes or disputes between labor unions, employers, employees and third parties, and this is especially true since the enactment of the National Wagner-LaGuardia Act and similar labor acts such as our own State Labor Act, Section 7612, Remington's Supplement.

While Sections 78 and 79 of that latter Act were held unconstitutional by our state Supreme Court in the case of Blanchard versus Golden Age Brewing Company, 188 Wash. 396, the Supreme Court of the United States held the Wagner-LaGuardia Act, upon which our State Labor Act, supra, was patterned, a valid enactment. While our state Supreme Court has never overruled its decision in the Blanchard case, its subsequent decisions, in my opinion, have apparently either ignored or failed to follow such earlier decision. It is noted, however, that Judge Steinert, the writer of the decision in the Blanchard case, has consistently adhered not only to such decision, but also to his opinion that all picketing is coercive.

Second, while neither the Blanchard decision nor any subsequent decision of our Supreme Court has held [fol. 85] invalid Section 13 of our State Labor Act, supra, which defines a labor dispute, decisions subsequent to the Blanchard decision have not been harmonious or uniform either as to the meaning of a labor dispute or as to the applicability of the federal decisions, in either so-called jurisdictional disputes between negative unions themselves or disputes between unions and, one, persons employing non-union members, and two, persons with no employees.

In this connection it is noted that said Section 7612-13 of our State Labor Act provides,

"A. A case shall be held to involve or to grow out of a labor dispute when the case involves persons who

are engaged in the same industry, trade or occupation, or have direct or indirect interests therein, or who are employees of the same employer, or who are members of the same or an affiliated organization of employees, or employees, or associations of the same employer."

I do not quote all of Subdivision A there for the reason it is not material.

"C. The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment."

The rest I italicize:

"Regardless of whether or not the disputants [fol. 86] stand in the approximate relation of employer and employee."

The italics that I have indicated are mine. In this connection see two cases which have been cited by Counsel just this morning to me, so I haven't had a chance to thoroughly analyze those cases. See *Milk Drivers Union versus Lake Valley, etc., Incorporated*, 311 U. S. 92, 85 Law Edition 63; *Bakery Sales, etc., Union versus Marshall, U. S. Supreme Court Advance Opinions*, Vol. 92, No. 12, Page 599.

Three, while the majority decision in the Gazzam case apparently holds that its en banc decision in the case of *State ex rel Lumber and Sawmill Workers versus Superior Court*, 24 Wash. 2nd 622, 166 A.L.R. 165, is not inconsistent with its later decision in the case of *Swenson versus Seattle Central Labor Council*, 27 Wash. 2nd 193, I respectfully submit that the two decisions are fundamentally opposed and irreconcilable. In addition to the reasons set forth in Judge Able's dissenting opinion in the latter case, I believe that Judge Schwollenbach, author of the majority opinion, inadvertently overlooked the fact that at the time of the commencement of the dispute there in question between plaintiff and defendants, a member of the Teamsters Union affiliated with the Central Labor

Council was an employee of the plaintiff. The dispute between the plaintiff and defendant in that case was in my opinion not a jurisdictional dispute, but rather a dispute over working conditions.

[fol. 87] In the case of Carpenters, etc., Union versus Ritter, 315 U. S. 722, 86 Law Edition 1443, 62 Supreme Court 807, cited in the Swenson case, the Supreme Court of the United States held that a Texas statute forbidding the kind of picketing there in question was valid and not in conflict with the decision of the Supreme Court in the case of Thornhill versus Alabama.

Because the State of Washington has no statute similar to that of Texas fixing such a limit of permissible contest open to industrial combatants, I held in my memorandum decision in the Swenson case that the Ritter case was neither applicable nor controlling in labor disputes in this state.

It was held by our Supreme Court in the majority opinion in the Swenson case that the Ritter case was applicable and that the picketing in question in the Swenson case was unlawful because, first, the plaintiff employed no union men; two, it violated a cross-check certificate made by a regional director of the War Labor Board, and third, because it was coercive.

It is stated in the majority opinion in the Gazzam case at Page 467 of the case as reported in 129 Wash. Decisions, No. 13, as follows:

"We hold that the acts of respondents in so far as the picketing was concerned were coercive, first, because they violated the provisions of Remington's Revised Statutes Supplement Section 7612, Subdivision 2."

You may italicize these words:

"And second, because they were in violation of the, [fol. 88] rule of common law as announced in the cases just approved."

Italics mine.

While I personally believe that no distinction can be drawn between picketing an employer's place of business and placing him on an unfair list, the Gazzam case seems to indicate otherwise. Both forms, such as picketing an employer's place of business or placing him on an unfair list, in my opinion are coercive, both are species of persuasion. The object and purpose of both is to inform the public and the members of its union of the dispute between the employer and the union. Peaceful picketing in my opinion is that which is free from violence or threatened violence, or interference with the workers of an employer. Such I found was the character of the picketing involved in the Swenson case. Peaceable picketing, in my opinion, under the decisions of the Supreme Court, prior to the Swenson and Gazzam cases, was lawful and not subject to injunction, even though it was coercive in nature.

Under the decisions in the latter cases, it seems that all picketing is subject to injunction if it is in any nature or any wise coercive. While I find that the picketing here in question in the case at bar violated no statute, was and is free from violence, threats of violence, intimidation or interference with any workers or employees of the plaintiff, it is my duty and I am constrained to hold that, under the decision in the Gazzam case and the Swenson case, the plaintiff is entitled to a temporary injunction, irrespective of my personal views concerning peaceful picketing.

[fol. 89] Findings and conclusions and order granting to the plaintiff temporary injunction pendente lite upon his filing an approved bond in the sum of \$1,500.00 may be prepared, served and presented for signature and entry.

This disposes, I think, Mr. Bassett, of your motion made this morning. Findings and conclusions and judgment will show a denial and an exception.

COLLOQUY

Mr. Bassett: I didn't quite understand Your Honor's finding concerning the contract that existed in August, 1947, when this dispute arose. Of course, the testimony is undisputed that there was a binding contract, he was a party to it, he was a member when it was negotiated the previous April, April, 1946, and the breach of that contract was the thing that brought about this picketing. I didn't under-

stand Your Honor to consider that, and we of course contend that that is——

The Court: I did consider it, and I can't see any distinction here.

Mr. Bassett: I see. That is a distinction, of course——

The Court: I can't see any distinction between this case and the Hanke case.

Mr. Bassett: Well, that is the only distinction, Your Honor, the contract. There was no contract in the Hanke case.

The Court: I think the distinction is—at least in my limited time I have not found any cases which oppose such a distinction.

Mr. McCune: My only suggestion would be, Your Honor——

[fol. 90] The Court: You have a point there, however.

Mr. Bassett: I think that is a fact. It was not apparent in that case.

The Court: I have explained my views fully so that the Supreme Court may have the benefit of them, or the Supreme Court of the United States if this case goes to it.

Mr. Bassett: That is exactly why I called attention to this admitted breach of contract.

The Court: Yes.

Mr. McCune: If the Court please, I have only this suggestion to make with respect to the bond, that I wonder if the Court could reduce that to \$1,000.00. This man has been considerably impoverished by the situation which has prevailed.

Mr. Bassett: Your Honor, I was going to ask——

The Court: Well, in view of the probable ultimate destination of this case, I think the bond is reasonable.

Mr. Bassett: I was going to ask for a much larger bond, because this case is undoubtedly going to affect the activities of this Union and its contracts with other similar employers. I noted that they were quite interested, they are all here to see what was going to happen in this case, and we can expect a great deal of damage as a result.

Mr. McCune: I question whether that is recoverable damage, Your Honor.

The Court: I think a \$1,500.00 bond will cover the matter. I want to express my appreciation to Counsel

[fol. 91] for the able and courteous manner in which both have presented this case.

Mr. Bassett: Thank you, Your Honor.

Mr. McCune: Thank you, Your Honor.

(Whereupon, at 10:15 o'clock A. M., Friday, May 21, 1948, an adjournment herein was taken.)

[fol. 92] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

No. 395781

MEMORANDUM DECISION—Labor Unions—Picketing.

GEORGE E. CLINE, Plaintiff,

vs.

AUTOMOBILE DRIVERS ETC. UNION, Defendants.

MESSRS. McCUNE & YOTHERS, Attorneys for Plaintiff,

MESSRS. BASSETT & GEISNESS, Attorneys for Defendants.

Being of the opinion that my oral decision on May 21st was perhaps prolix and covered discussion or argument concerning questions and matters which have become moot by reason of the decision of the supreme court in the case of *Gazzam v. Building Service Employees*, 129 Wash. Dec. 455, I have decided, upon my own motion, to withdraw said oral decision and substitute therefor this written memorandum decision. It will be signed and entered prior to the signing and entry of findings of fact and order, and will supersede and take the place of said oral decision.

The fundamental facts in this case, in my opinion, are, in ultimate effect, substantially identical with those in the case of *Hanke v. International Brotherhood of Teamsters Etc. Union*, No. 392989 of this court. While it is contended in an able argument by counsel for the defendant that a distinction exists between the *Hanke* case and the case at bar, by reason of the former or past relationship between the parties to this action, I believe that the correct [fol. 93] applicable test herein is the relationship between the parties at this time.

The supreme court in the *Gazzam* case *supra*, held that such picketing as involved herein should be enjoined, the court on page 467 saying:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.), 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved. (Italics mine.)

My decision relative to picketing in the case of *Swenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, was reversed by the supreme court, and the supreme court in the subsequent *Gazzam* case expressly approved its previous decision in the *Swenson* case.

I concur in the able opinion of Judge McDonald in the *Hanke* case, *supra*, that the decisions of the supreme court in the *Swenson* and *Gazzam* cases are controlling in both the *Hanke* case and the case at bar. (See also *Walker v. Gilman*, 25 Wn. (2d) 557.)

While I find that the picketing here in question was free from violence, threats of violence or interference with any employees of the plaintiff, such picketing, under the *Swenson* and *Gazzam* cases, *supra*, is coercive and subject to injunction.

Findings, conclusions and order granting to the plaintiff a temporary injunction against picketing *pendente lite*, upon the filing by the plaintiff of an approved bond in [fol. 94] the sum of \$1500.00, may be prepared, served and presented for signature and entry.

Dated May 24, 1948.

(Signed) CHESTER A. BATCHELOR.

Judge

[fol. 95] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

{Title omitted}

STIPULATION

BE IT REMEMBERED that following the aforesaid proceedings this cause came on regularly for trial on the merits on the 25th day of June, 1948, before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court; the plaintiff appearing by C. M. McCune, his attorney; the defendants appearing by Samuel B. Bassett, their attorney; and the trial or further proceedings to be had having been continued on the joint motion of counsel to the 29th day of June, 1948, at 9:30 A.M., at which time the parties, through their counsel, stipulated in open court that the cause be submitted to the court for final judgment on the merits upon the evidence heretofore taken on plaintiff's application for a temporary injunction, and the arguments heretofore submitted; and the plaintiff further stipulated to waive his claim for damages as a result of the picketing complained of. Thereupon the cause was submitted for final judgment as stipulated and the court granted the plaintiff a permanent injunction pursuant to the terms and conditions contained in the temporary injunction heretofore issued.

[fol. 96] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

{Title omitted}

JUDGE'S CERTIFICATE—Filed Aug. 11, 1948

STATE OF WASHINGTON)
COUNTY OF KING)

ss.

I, CHESTER A. BATCHELOR, one of the Judges of the above entitled Court, and the Judge before whom the above entitled and numbered cause was tried, sitting in Department No. 3 thereof, do hereby certify:

That the matters and proceedings contained in the foregoing Statement of Facts are matters and proceedings oc-

curing in said cause, and the same are hereby made a part of the record herein:

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record herein.

I do further certify that the foregoing Statement of Facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of [fol. 97] testimony, and all motions, offers to prove, if any, and admissions, and rulings thereon.

I do further certify that Defendants' Exhibits Nos. 1, 2, 3, 4, and Plaintiff's Exhibit No. 5 are all the exhibits admitted upon the trial of said cause.

Done in open court, Counsel for plaintiff and defendants being present and consenting, this 11 day of August, 1948.

CHESTER A. BATCHELOR.

Judge

[FILE ENDORSEMENT OMITTED]

[fol. 98] [CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT OMITTED IN PRINTING.]

[fol. 99] IN THE SUPREME COURT OF THE UNITED STATES

No.

GEORGE E. CLINE, Respondent

VS.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882, RALPH REINERTSEN, its Business Agent, and J. J. ROHAN, its Secretary, Petitioners.

STIPULATION TO OMIT FROM PRINTED RECORD MATTERS NOT ESSENTIAL TO CONSIDERATION OF QUESTIONS PRESENTED

It is hereby stipulated by and between the parties hereto, through their undersigned attorneys of record, that the following documents and papers in the certified transcript of the record may be omitted from the printed record, for

the reason that they are not essential to a consideration of the questions presented by the petition for writ of certiorari:

- (1) Affidavit of George E. Cline
- (2) Order to show cause
- (3) Bond for injunction
- (4) Notice of appeal (to State Supreme Court)
- (5) Bond for costs on appeal
- (6) Motion for order fixing amount of cost bond on application for certiorari
- (7) Order fixing amount of cost bond on application for certiorari
- (8) Bond for costs on application for certiorari
- (9) Stipulation concerning statement of facts and exhibits.
- (10) Order concerning statement of facts and exhibits
- (11) Praeceptum for record

Dated at Seattle, Washington, this 16th day of August, 1949

Samuel B. Bassett, Attorney for Petitioners
C. M. McCune, Attorney for Respondent

[fol. 100] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 364

ORDER ALLOWING CERTIORARI—Filed December 19, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 309, International Brotherhood of Teamsters, Chauffeurs, etc., et al. vs. Hanke et al.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.